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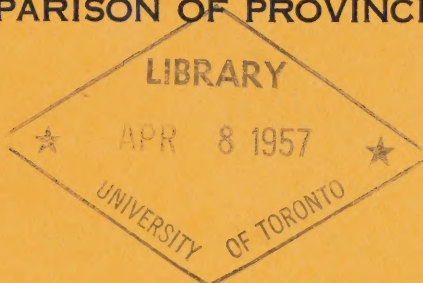


CANADA

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WORKMEN'S COMPENSATION IN CANADA

A COMPARISON OF PROVINCIAL LAWS



December, 1956

**DEPARTMENT OF LABOUR OF CANADA
LEGISLATION BRANCH**

**HON. MILTON F. GREGG
MINISTER**

**A. H. BROWN
DEPUTY MINISTER**

Price: 25 cents

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Introduction

Each of the ten Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p. 17); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively, the industries covered by the Act being divided into groups and the employers in each group being collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in eight provinces on the basis of 75 per cent of average earnings, in two provinces on 70 per cent of earnings, subject to

the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 or 70 per cent of average earnings, as above) in the form of a monthly pension for life or, when disablement is slight, paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation. In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers and employees are given an opportunity to make representations. In Saskatchewan, the Act requires a committee equally representative of employers and organized employees to be appointed by the Lieutenant-Governor in Council every four years and a committee reviewed the Act in 1954. The Alberta Act is usually reviewed every four years. A special committee of the Legislature was established for this purpose in 1955. In Manitoba, in 1955 the Standing Industrial Relations Committee of the Legislature was authorized to make a study of the Act. In recent years Royal Commissions have been appointed to inquire into the operation of the Ontario and British Columbia Acts. The reports of Mr. Justice Roach in Ontario and of Chief Justice Sloan in British Columbia were made in 1950 and 1952, respectively.

Only the main points of the legislation are covered in this analysis. The scale of benefits and the occupational diseases which are compensated are set out in tables at the end of the bulletin. A summary of the provisions of the Conventions and Recommendations of the International Labour Conference on workmen's compensation permits a comparison between I.L.O. standards and the provincial statutes.

Changes in 1956

In 1956 the Workmen's Compensation Acts of eight provinces (all except British Columbia and New Brunswick) were amended. Higher disability benefits were provided for through an increase in the compensation rate in four provinces. In Nova Scotia, the rate was raised to 70 per cent in Manitoba, Newfoundland and Quebec, to 75 per cent of the workman's average and earnings. The ceiling on annual earnings was increased in Manitoba (from \$3,000 to \$3,500), in Alberta (from \$3,000 to \$4,000) and in Ontario and Saskatchewan (from \$4,000 to \$5,000). The \$5,000 maximum in Ontario is effective from January 1, 1957. In Nova Scotia, the minimum permanent total disability payment was raised from \$85 to \$100 a month. Widows' pensions and payments in respect of dependent children were increased in Alberta and Newfoundland, and in both provinces the increases were made applicable to all widows and dependent children in receipt of compensation. The Nova Scotia amendments increased from \$130 to \$150 the maximum monthly payment to a widow and children, and from \$120 to \$150 the maximum monthly payment to orphans, permitting payment for five rather than four children. In Quebec, the waiting period was reduced from seven to five days.

In Alberta and Manitoba, the amendments put into effect recommendations of special legislative committees which reviewed the Acts during the year.

ALBERTA

In *Alberta*, as recommended by the Legislative Committee appointed to review the Act, the maximum annual earnings which may be taken into account for compensation purposes were increased from \$3,000 to \$4,000.

The monthly allowance to a widow or invalid widower was increased from \$50 to \$60 and a lump sum payment of \$150, instead of \$100, was provided for. Payments in respect of dependent children under 16 were raised from \$25 to \$30 a month and the same increase was provided for a dependent invalid child regardless of age. The increases were made applicable to all widows, invalid widowers and dependent children receiving compensation on or after April 1, 1956, irrespective of the date of the accident.

A new provision allows the Board to pay compensation to a dependent child who is over 16 at the time of a workman's death in order that he may continue his education to the age of 18. Previously, the Board was enabled to continue payments to the age of 18 where it considered it advisable to furnish further education to a child "approaching the age of 16 years" but it did not have authority to pay compensation in respect of a child who was between the ages of 16 and 18 at the time of a workman's death.

As recommended by the Legislative Committee, the period during which a dependent common law wife must have lived with a deceased workman immediately preceding his death in order to qualify for compensation was reduced from seven to two years. Subject to the above conditions, benefits are payable, at the discretion of the Board, if there is no dependent widow and if the common law wife has borne the workman one or more children.

In accordance with the increase from \$50 to \$60 in widows' pensions, the lump sum payment of one year's pension to a widow on re-marriage was increased from \$600 to \$720. The provision for resumption of payments in the event that a widow should later be in necessitous circumstances by reason of the death of her husband or his confinement to jail or some other institution was struck out since the Legislative Committee reported that it had never been used.

The subsistence allowance payable to a workman undergoing treatment away from home was raised from \$5 to \$6 a day. The Board was also authorized to provide treatment services or attendance as it deems necessary for a workman who is rendered helpless through permanent total disability.

By a further amendment it was provided that compensation may be paid as a lump sum, at the discretion of the Board, where impairment of a workman's earning capacity is 5 per cent or less. The Act formerly provided that payment might be made in a lump sum where earning capacity was diminished 10 per cent or less. In case of death or permanent total disability or in case of permanent partial disability where earning capacity is diminished more than 5 per cent, a lump sum payment may only be made upon the application of, and at an amount agreed to by, the dependant or workman concerned.

Further amendments gave effect to a recommendation of the Committee that a greater choice of specialists should be provided in cases where a medical issue is in question. Two specialists in the class of injury or ailment for which compensation is claimed, one selected by the workman and the other by the employer from a list of at least four furnished by the Board, must now be appointed to examine the workman and report to the Board. If the two so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be conclusive, unless the Board directs otherwise. Previously, the workman chose the one specialist to whom his case was referred from two names submitted to him by the Board. The workman and the employer have 14 days in which to make their choice from the specialists nominated and if either or both fail to do so the selection must be made by the Board.

As in the Acts of Manitoba and Saskatchewan, which were similarly amended in recent years, the words "specified or stipulated by the employer" were deleted from the definition of "learner", making it clear that a learner undergoing training or doing probationary work as a preliminary to employment is eligible for compensation regardless of whether or not the specific act in which he is engaged at the time of the accident is work "specified or stipulated by the employer" as part of his duties.

Provision was made for an agreement between the Board and any other compensation authority in Canada for the sharing of the cost of a silicosis claim in proportion to the exposure to silica dust by the claimant in the provinces or territories concerned, and for the payment of moneys out of the Accident Fund pursuant to such an agreement. A similar amendment was made to the British Columbia Act in 1955.

MANITOBA

The *Manitoba* Act was amended to increase the basis of computation of compensation from 70 to 75 per cent of a workman's average earnings and the maximum amount of yearly earnings taken into account from \$3,000 to \$3,500.

The lump sum payable to a widow was increased from \$100 to \$200 and provision was made for payment of a sum not exceeding \$50 for a burial plot. Manitoba is the only province which makes such provision.

With respect to the maximum compensation payable in death cases, the same percentage of earnings applies as in compensation for disability. It was provided that, exclusive of burial and transportation allowances and the lump sum to the widow, the maximum amount of compensation which may be paid to the dependants of a deceased workman is 75 per cent (formerly 70 per cent) of the workman's average monthly earnings.

Provision was made, as in Alberta, for payment of compensation in respect of a child who at the time of the death of a workman is between the ages of 16 and 18 years for the purpose of furthering his education. No payments may be made after the age of 18. As in Alberta, the Board has had authority to continue payments for the furthering of a child's education but was required to decide whether further education should be furnished the child when he was approaching the age of 16.

A further change had to do with payment of compensation for silicosis. It is now provided that, subject to the conditions for eligibility laid down in the Act for compensation for silicosis, a workman disabled from the disease is to be compensated in the same manner and to the same extent as if he were disabled from any other industrial disease. Under the former provisions, if a workman was disabled to a greater extent than 20 per cent from silicosis complicated with tuberculosis, he was entitled to compensation on the basis of only 50 per cent of his earnings. References to silicosis complicated with tuberculosis were deleted.

NEWFOUNDLAND

In *Newfoundland*, the rate of compensation for disability was raised from 66 2/3 to 75 per cent of average earnings.

The monthly pension to a widow was raised from \$50 to \$60. The allowance in respect of a dependent child under 16 in the care of a parent was raised from \$12 to \$20 a month and that for an orphan child from \$20 to \$30 a month. These increases were made applicable to all payments of compensation to widows and children accruing after April 1, 1956, regardless of the date of the accident.

It was also provided that, exclusive of burial expenses, total monthly payments to dependants in death cases may not exceed 75 per cent, instead of the former 66 2/3 per cent, of the average earnings of the workman. Where compensation would exceed this percentage, it must be reduced, but the Act stipulates that a widow may not receive less than \$60 a month, a dependent child less than \$20, or an orphan less than \$30, so long as the total monthly compensation does not exceed \$130 (formerly \$100).

The provisions authorizing the establishment of a pension scheme for the members, officers and employees of the Board were revised.

NOVA SCOTIA

The *Nova Scotia* Act was amended to raise the rate of compensation for disability from 66 2/3 to 70 per cent of average earnings and to make the minimum

payment for permanent total disability \$100 a month instead of \$85. The change in the percentage rate was made applicable to accidents occurring on or after April 1, 1956.

Further amendments increased from \$130 to \$150 the maximum monthly payment to a widow and children, and from \$120 to \$150 the maximum monthly payment to orphans, permitting payment for five rather than four children. Under the Nova Scotia Act, a widow receives a monthly payment of \$50 with an additional monthly payment of \$20 for each child under 16. Payment to an orphan child is \$30 a month. The increases were made applicable to compensation payable in respect of accidents occurring before as well as after the amendments went into effect.

ONTARIO

In *Ontario*, the maximum annual earnings which may be taken into account in computing compensation were increased from \$4,000 to \$5,000, effective from January 1, 1957.

PRINCE EDWARD ISLAND

The *Prince Edward Island* Act was amended to require the Board to report annually to the Minister of Labour instead of to the Minister of Industry and Natural Resources. The amendment was consequent upon the setting up of a Department of Labour in Prince Edward Island in 1955.

QUEBEC

The *Quebec* Act was amended at the 1955-56 session of the Legislature to increase the percentage rate of earnings taken in computing compensation from 70 to 75. The same percentage increase applies with regard to the maximum monthly compensation payable to dependants in fatal cases.

In addition to maximum funeral expenses of \$200 already provided for, the amending Act authorized payment of a sum not exceeding \$150 for transporting the workman's body when the Workmen's Compensation Commission considers the expenditure justified by reason of the distance between the place of death and the place of burial.

By a further amendment it was provided that compensation to an invalid child is to be paid for the duration of the invalidity. The former provision was that compensation was to be continued as long as, in the opinion of the Commission, the workman might reasonably have been expected to contribute to the child's support.

The waiting period was reduced from seven to five days. To be eligible for compensation from the date of the accident a worker must now be disabled for five days or more.

Effective from January 1, 1956, the amendments were made applicable only to accidents occurring after that date.

SASKATCHEWAN

In *Saskatchewan*, the maximum annual earnings on which compensation is based were increased from \$4,000 to \$5,000 and, instead of the former payment of \$100 to a widow, a lump sum of \$250 was provided for.

Individual Liability

In addition to the general system of collective liability, laws of the individual liability type providing for the payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing industry in Newfoundland, in employments under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however, the employer is required to pay compensation on the finding of a court to that effect whereas the adjudication under the territorial ordinances is made by the Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund but contribute their proportion of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in fishing or dredging shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or burial expenses but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right

of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the course of employment are compensated without recourse to the law courts, are protected in some measure by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

As amended in 1955, both Ordinances provide that, with respect to accidents occurring on or after January 1, 1956, a widow is to receive a lump sum of \$300 and \$75 a month until re-marriage or death. For each dependent child under the age of 16 a monthly allowance of \$25 is payable, to be increased by an additional payment not exceeding \$10 a month, at the discretion of the Referee, where a child is an orphan. Compensation where the only dependants are persons other than widow and children is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case he may not receive less than \$25 a week or his full earnings, if less than \$25. In computing average earnings with respect to an accident occurring on or after January 1, 1956, \$4,000 a year is the maximum amount which may be taken into account.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 14.

Federal Government Employees

The Government Employees Compensation Act, which was first enacted in 1917, provides for the payment to a federal Government employee of compensation, medical and hospital expenses and other benefits for disablement from accident or industrial disease arising out of his employment at the same rate and under the same conditions as are provided for workmen employed by private employers under the Workmen's Compensation Act of the province in which he is usually employed. The provincial Workmen's Compensation Board acts as the administrative authority in determining compensation, and payment of compensation, including administrative costs, is made by the federal Government.

Under this statute, federal Government employees are eligible for compensation for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed is entitled to compensation whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

In 1955 the Act was amended to make certain administrative changes. One of the changes made is that compensation is now to be paid in accordance with the Workmen's Compensation Act of the province "where the employee is usually employed" instead of, as under the earlier wording of the Act, in accordance with the law of the province in which the accident occurred or the industrial disease was contracted.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is for the purposes of the Act considered to be usually employed in the province of Alberta and an employee whose usual place of employment is outside Canada, other than a person locally engaged outside Canada, is considered to be usually employed in the province of Ontario.

Provision was made for the inclusion within the definition of "employee" of persons who are not paid a direct wage or salary but who are otherwise employees of Her Majesty. Previous to the amendment, only persons paid a direct wage or salary by the Crown were covered.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be "employees" for the purposes of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenal Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

By a further amendment, the Minister of Labour was given authority to promote accident prevention activities and safety programmes in the public service of Canada.

Blind Workmen

In Alberta, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan, there are special statutes, and in Quebec there are special provisions

in the Workmen's Compensation Act, dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen's Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other six provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

Workmen's Compensation Boards

Each Workmen's Compensation Act is administered by a board of three members, five in Quebec, called the Workmen's Compensation Board, or in Quebec, Workmen's Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Manitoba and Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen's Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board. Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

Cost of Administration

In each provincial Act except that of New Brunswick it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund. In New Brunswick, the Act provides that the salaries of Board members and other costs of administration are to be paid from the Consolidated Revenue Fund, unless the Lieutenant-Governor in Council orders payment of any portion from the Accident Fund. In most provinces a grant was made by the Government in the early years of operation to assist in organizing the work and meeting initial expenses. The Prince Edward Island Act authorizes an annual grant not exceeding \$10,000 from the Provincial Treasury, and such a grant was given in the first year of operation. The Newfoundland Act provides that an annual contribution from moneys voted by the Legislature may be made towards the expenses of administration of the Act, and any sum so paid, not to exceed \$25,000, must be repaid to the Minister of Finance at his request. In British Columbia, Manitoba, Ontario and Quebec, an annual grant may be made from the Consolidated Revenue Fund to assist in defraying expenses but in none of these provinces is any financial assistance now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

Scope of Laws

The provincial Workmen's Compensation Acts vary in scope but, in general they all cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops are covered in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan; hotels in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan; and restaurants in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan. Hospitals are within the scope of the Alberta, British Columbia, New-

foundland, New Brunswick, Ontario and Saskatchewan Acts; nursing homes are covered in British Columbia and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, and Prince Edward Island. The operation of an office building or a building rented for manufacturing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is under the British Columbia, Newfoundland and Saskatchewan Acts. Janitors and caretakers are covered in Newfoundland, New Brunswick and Prince Edward Island. Transport by air is expressly included in British Columbia, New Brunswick, Ontario and Prince Edward Island. In Manitoba, it is included when carried on by certain subsidiaries of the Canadian Pacific Railway Company. In New Brunswick, however, the industry is only included if 200 workers are employed, and in Prince Edward Island, if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the industries and occupations now covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer-parlours.

There are other variations with respect to miscellaneous industries or other occupations. The scope of the Acts is affected, too, through the power given in all provinces but Alberta and British Columbia to exclude small establishments. Some undertakings have been excluded unless more than a specified number are employed.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia, Manitoba and Quebec. In other provinces, e.g., Alberta, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to particular classes of workers, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Board in every province but British Columbia has power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia. The Manitoba Board has not exercised its power to exclude small industries while, on the other hand, the Nova Scotia Board has excluded all industries employing less than five persons, and in Newfoundland and Prince Edward Island, all those employing less than three persons are excluded. In Newfoundland, New Brunswick, Prince Edward Island, Quebec and Saskatchewan, regulations exclude specific industries unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded notifies the Board that he wishes to be included, the undertaking must be admitted. In Quebec, only by notification by the employer is the Board required to include the undertaking in the collective liability scheme. In Saskatchewan, application by employer or workman in these cases must be approved by the Board.

Farm Labourers and Domestic Servants

Certain classes of workers, although they are expressly excluded by some of the Acts may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, clerical and casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application. In New Brunswick, by a 1955 amendment which will be proclaimed in force, provision was made for persons employed as farm workmen to be brought under Part I on the application of the employer. Domestic servants are excluded, subject to provision for admission on the application of the employer.

The provisions in the Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries and domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers maybe brought within it. As a result of a 1954 amendment, domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of these provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

Clerical and Casual Workers and Outworkers

In Manitoba, clerical workers who are employed in industries which are under the Act and who are not exposed to the hazards of the industry are excluded from Part I but they may be brought within the Act on the application of the employer; in the other provinces, clerical workers are eligible for compensation.

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home, are outside the scope of the collective liability system in all provinces. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, these two classes may be brought within the scope of the Act under the conditions outlined above (see p. 12). In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

Seamen

The Merchant Seamen Compensation Act, 1946, applies to seamen, excluding pilots, apprenticed pilots and fishermen, on ships registered in Canada or chartered by demise to a resident of Canada or to a person whose principal place of business is in Canada provided that the ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship registered out of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer of a seaman injured by reason of an accident arising out of and in the course of his employment is required to pay compensation in accordance with the scale set out in the Act, and to cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board. Payment is made by the employer direct. No compensation is payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act.

Benefits under the Act, as amended in 1953, include, in a fatal case, \$50 monthly to a widow, with \$15 for each child under 18 years, or \$25 for each orphan child, together with a maximum of \$200 for burial expenses if they are not borne by the employer in accordance with the Canada Shipping Act, and not more than \$125 for transportation and other expenses incurred in transferring the body to the place of interment. In case of total disablement, the seaman is entitled to two-thirds of his average earnings and for partial disablement, two-thirds of the difference between his average earnings before and after the accident.

In calculating compensation for disability, not more than \$3,600 annual earnings may be taken into account. Compensation is payable from the date of disability if the injury disables the seaman for four days or more. Medical aid is payable from the date of the injury.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec Acts but in some provinces they have been excluded by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the federal Act come from the four Atlantic Provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts stipulate that medical aid is not payable under their provisions. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and, by a 1954 amendment, the Board was given discretionary power to pay the medical costs of a seaman when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act. (p. 19)

Risks Covered

Where in any employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury

is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Manitoba, Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia Act has a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compen-

sation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious and wilful misconduct and did not result in the workman's death.

In all the provinces but New Brunswick the word "accident" is defined to include "a wilful and an intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". Under the New Brunswick Act, "accident" means an unlooked for mishap or untoward event which is not expected or designed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, compensation is payable for injury by lightning, and the Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan Acts expressly include frostbite resulting from the workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be, it shall be presumed that his death was the result of an accident arising out of his employment unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine, (in Nova Scotia, of a coal mine).

Occupational Diseases

In addition to accidents, certain occupational diseases give a workman the right to compensation in all the provinces, "if the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement whether under one or more employments". In Manitoba and Ontario, any disease peculiar to an industrial process, trade or occupation is compensable and in Alberta, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In all provinces but Alberta, it is stipulated that compensation shall not be paid if, at the time of entering into the employment, the workman had wilfully and falsely represented himself as not having previously suffered from the disease. In British Columbia, Manitoba, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

The diseases for which compensation is payable are set out in a schedule to each Act, or, in New Brunswick and Ontario, in the regulations of the Board. The Board in every province is given authority to add to the schedule and in most cases other diseases have been added to the original list. In New Brunswick, the Board was empowered to determine by regulation all the diseases to be compensated. The occupational diseases which are compensable under the provincial Acts are shown in tables beginning at page 30.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an occupational disease, and if he refuses or fails to do so, the employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. In Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan, silicosis is compensated under certain conditions, that is, the workman must have been employed for a stated period in employment where he was exposed to silica dust either in a specified industry or, in Manitoba and Nova Scotia, in any industry within the scope of Part I of the Act. In Newfoundland, New Brunswick and Prince Edward Island, silicosis is included in the schedule of industrial diseases; it is compensated in Newfoundland if it occurs in mining and in Prince Edward Island if it occurs in any process involving the inhalation of silica dust.

Waiting Period

Each Act provides for a "waiting period", which varies from one to seven days.

In Alberta and Saskatchewan, the waiting period is one day, that is, no compensation is payable for a disability that lasts only for the day of the accident but if the worker is disabled for any longer time, compensation is payable from and including the day after the accident.

The British Columbia and Manitoba Acts provide for a waiting period of three days and a qualifying period (six days in British Columbia and seven days in Manitoba) at the expiration of which compensation is payable from the date of the accident. A worker in British Columbia whose disability lasts six days or less cannot recover compensation for the first three days of his disability. Only if a disability lasts longer than six days is compensation payable from the day of the accident. Similarly, an injured worker in Manitoba has to be off work longer than seven days in order to be eligible for compensation from the date of the accident.

In Newfoundland, New Brunswick and Prince Edward Island, the waiting period is four days; in Nova Scotia, Ontario and Quebec, it is five days. Workers receive no compensation, therefore, for short periods of disability, that is, less than four days in Newfoundland, New Brunswick and Prince Edward Island, and less than five days in Nova Scotia, Ontario and Quebec. Where the disability continues beyond the waiting period, compensation is payable from the date of the lay-off.

Under all the Acts, medical aid is given from the date of the accident.

Medical Aid

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they may be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiroprody Act and in Alberta and Saskat-

chewan, the term includes treatment by any person licensed under provincial law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners" defined as persons registered under the Chiropractic Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In all other provinces, the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. In Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan, workmen are entitled to have such apparatus kept in repair as the Board deems necessary, and in Alberta, British Columbia and Manitoba for as long as disability lasts. The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicine and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Prince Edward Island and Saskatchewan, the Board may replace and repair eyeglasses broken by an accident arising out of employment. The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta and Ontario, provision is made in permanent total disability cases for such other treatment, services or attendance as may be necessary as the result of the injury.

The Board is authorized to make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the allowance authorized to be paid is \$6 a day. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, the statutes in New Brunswick and Ontario merely stipulate that a workman must, if required by his employer, submit to a medical examination by a physician chosen and paid by his employer. The implication is that in the first instance he may choose his own doctor. In Quebec, the Act expressly states that a workman may select his physician. In Alberta, British Columbia and Manitoba, the Board is authorized to permit the workman to be treated by his own physician and this is the usual practice provided one reasonably near is chosen.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In Alberta, in cases of dispute, the Board, if requested by the workman in writing, must nominate not less than four recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of them to conduct the examination. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board. Similar provision for a medical appeal is made in British Columbia where a workman who requests a further examination must be examined by a specialist selected by himself from a list of specialists provided by the Board.

In all provinces the fees for medical aid are fixed by the Board.

Employers' Schemes for Medical Aid

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Act states that employers' schemes for medical aid may be approved subject to such conditions as the Board may impose. In Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan, contributions from workmen towards the expense of medical aid are expressly forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board. In Nova Scotia, schemes in the coal industry under which the miners pay the cost through a long-established arrangement with the local doctors have been permitted to continue in consideration of the employers' contributions to miners' relief societies which constitute virtually an insurance plan providing benefits in sickness and for dependants in case of death. In some districts these arrangements for medical treatment were altered so as not to apply to compensation cases.

Medical Aid for Seamen

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under the 1946 statute for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

First Aid

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

Rehabilitation

To aid in getting men back to work and in lessening any handicap, a Board may adopt any means considered expedient and pay the cost from the Accident Fund. Except in Alberta, British Columbia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$5,000 in Prince Edward Island; \$10,000 in Manitoba; \$15,000 in Newfoundland and New Brunswick; \$20,000 in Nova Scotia; \$100,000 in Quebec; and \$200,000 in Ontario. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in re-training and rehabilitation.

Accidents Occurring Outside the Province

The Act in each province makes some provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs outside the province if the place or chief place of business of the employer and the residence and usual place of employment of the workman are in the province and provided that employment out of the province has lasted

less than six months. In Ontario in 1953, however, a section was added to the Act which permits compensation to be paid in such circumstances when workmen are employed out of the province for a longer time than six months.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province followed employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits).

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight months. In these three provinces and in Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is outside the province merely for some casual and incidental purpose connected with his employment provided that he is a resident of the province and his employer has his place of business within its boundaries. A similar provision in the Ontario Act entitles a workman to compensation if his usual and principal place of employment is in Ontario even though his residence is outside the province.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if the place or chief place of business of the employer is in the province. An amendment to this section of the Manitoba Act in 1953 provided that members of a fire brigade or other municipal employees are eligible for compensation for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation where he is required to perform his work both in and out of the province and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident

in Ontario to compensation for an accident which happens out of Ontario on a ship registered in Canada or on one of which the owner or charterer has his chief place of business in Ontario whether or not the workman had been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that, where a workman is engaged in work part of which is to be performed in the province and part in an adjoining province or country, the work is considered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workman is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province or country in which the accident occurred as well as under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay any other Board for any payment of compensation made under such an arrangement. In Manitoba, where a workman's employment requires him to be regularly outside the province, the Board may arrange with the employer and the Board of the other province the premium to be paid to each Board.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another, and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

Non-resident Workmen and Dependants

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law stipulates that, where compensation is payable to persons residing outside of Canada, the Board may award a smaller sum if, in its opinion, dependants can be maintained on such smaller sum in a like degree of comfort as dependants of the same class in Canada. The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependant of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces, the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under that law resided in one of these provinces and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

Security for Payment of Compensation

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which, under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the preceding three months and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

Accident Prevention

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice must be given and the Newfoundland and Saskatchewan Boards may hold a conference with a committee consisting of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. In all these provinces and in Prince Edward Island, the Board may order an employer to install

in his plant, within a specified time, any safety device which in its opinion is necessary. In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. Safety regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. An accident prevention committee must be organized in every plant employing, in Alberta and Newfoundland, 10 or more workmen, or in British Columbia, 20 or more.

In Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Quebec, associations of employers, and in Saskatchewan associations of employers and workmen, in any of the classes into which they are divided for purposes of assessment may make rules for accident prevention. In New Brunswick and Nova Scotia, one accident prevention association covers the province. In Ontario and Quebec, certain classes are organized separately, construction, pulp and paper, lumbering, mining, electrical work and Class 20 in Ontario and pulp and paper, lumbering, metal mining and public utilities in Quebec. Employers in other classes in each province are associated in one body.

If the Newfoundland, Nova Scotia and Prince Edward Island Boards approve the rules, they become binding upon all employers in the class or classes whether members of the association or not. In New Brunswick, Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers affected and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. Where an association appoints safety inspectors, the Board in any of these provinces may pay the whole or part of their salaries out of the Accident Fund. A special grant may also be made towards the expenses of an association. Monies paid by the Board, under these provisions, are to be charged to the classes represented by the association concerned.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident is due to the failure of an employer to comply with the regulations or with the directions of the Board, it may, in British Columbia, collect from the employer the amount of the compensation payable, not exceeding \$300 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. Moreover, in Alberta, Ontario, Quebec

and Saskatchewan, if the Board considers that sufficient precautions have not been taken for the prevention of accidents or that working conditions are not safe or that machinery, appliances, etc., are defective or inadequate, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may exclude the industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

Conventions and Recommendations of the International Labour Conference

1. Accidents

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such

as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on p. 11.

2. Agriculture

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council, p. 13).

3. Occupational Diseases

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro- and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see p. 30.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

4. Minimum Scale of Compensation

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits, and dependent parents and grandparents.

In the Canadian provinces compensation is payable on at least as high a scale except that in all provinces a limit is placed on the maximum earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in New Brunswick and Quebec where the normal age is 18. In New Brunswick, however, payments cease if the child does not attend school up to 18 years. Exceptions are made for invalid children in all provinces and in Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, for children continuing their education up to 18 years of age.

5. Equality of Treatment for National and Foreign Workers

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 23.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claim originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

6. Jurisdiction in Disputes

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

Occupational Diseases

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in Manitoba and Ontario any disease peculiar to an industrial process or occupation may be compensated and in Alberta the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered	} British Columbia
Anthrax	} All provinces
Arsenic poisoning or its sequelae	
Lead poisoning or its sequelae	
Mercury poisoning or its sequelae	
Phosphorus poisoning or its sequelae	
Ammonia poisoning or its sequelae	} New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	} British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	} British Columbia, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	} British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino-derivatives, anilin and others.	} Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds	} Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work	} Saskatchewan
Brass, zinc or nickel poisoning or its sequelae	} Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema in any process using oxyacetylene or electric arc for cutting or welding	} British Columbia
Bursitis (see also Cellulitis)	} Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
— acute, elbow	
— prepatellar	
Cadmium poisoning	} Ontario, Quebec, Saskatchewan

Cancer arising from the manufacture, handling or use of pitch or tar	} Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	} Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae	} British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan
Carbon dioxide poisoning or its sequelae	} Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae	} British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis, subcutaneous, hand	} Alberta, British Columbia, Newfoundland, Nova Scotia
- -, - -, patella	} British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlorethylene, tetrachlorethane, trichloronaphthalene and others), poisoning by or its sequelae	} British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning	} Saskatchewan
Chrome poisoning	} Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using	} British Columbia
Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or handling cold materials	} British Columbia
Compressed air illness	} British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gases, fumes, vapours, mists or smoke	} British Columbia
Conjunctivitis and/or retinitis due to electro - and oxy-acetylene welding	} British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of	} British Columbia
Cyanide poisoning	} Saskatchewan
Dermatitis and occupational ulcerations and infections of the skin	} Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours	} Alberta

Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manufacturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen	British Columbia
Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan
Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding	British Columbia
Glanders	Alberta, New Brunswick, Saskatchewan
Heat exhaustion	British Columbia
Infection from handling sugar	New Brunswick
Infected blisters from any process involving continuous friction, rubbing or vibration	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper	British Columbia
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	Saskatchewan
Nickel and its compounds, dermatitis in any process using	British Columbia
Nitrous fumes, poisoning by, or its sequelae	British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan

Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to	} Saskatchewan
Pneumoconioses other than silicosis	} Ontario
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	} Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	} Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis-producing dust	} British Columbia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending — Saskatchewan)	} British Columbia, Saskatchewan
Poisoning in any process where there is exposure to methyl chloride	} British Columbia
Poisoning caused by chemicals used in the painting industry	} New Brunswick
Pulmonary and respiratory irritation from exposure to vapours, mists or dust	} British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry	} Ontario
Rhinitis from contact with allergens or chemical vapours or dust	} British Columbia
Seal finger in handling seals or seal products	} Newfoundland
Silicosis	} New Brunswick, Prince Edward Island
Silicosis in mining	} Newfoundland
Silicosis in any industry under Part I of the Act	} Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal — Quebec)	} Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous-mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust	} British Columbia
Silicosis in making pottery	} Quebec

Staphylococcus aureus, infection by, from employment under Part I of the Act in hospital, sanatorium or clinic or branch of the Victorian Order of Nurses; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; or in the Department of Bacteriology of the University of British Columbia	British Columbia
Stone workers' or grinders' phthisis	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan
Tenosynovitis, inflammation affecting the sheaths and tendons (wrist only — Newfoundland, Quebec and Saskatchewan)	British Columbia, Newfoundland, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist	British Columbia
Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear	British Columbia
Tuberculosis from employment under Part I of the Act in hospital, sanatorium or clinic or branch of the Victorian Order of Nurses; in British Columbia Medical Research Institute; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; and in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act	British Columbia
Tuberculosis contracted by a workman employed in a hospital, sanatorium or sanitarium to which Part I of the Act applies or in a provincial laboratory	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work	British Columbia, Prince Edward Island, Saskatchewan
Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities)	British Columbia, Saskatchewan
Wood alcohol, poisoning by	British Columbia, Saskatchewan

X-rays, radium or other radio-active substances, any disease due to exposure to	} British Columbia, Ontario, Quebec (ulceration or malignant disease), Sas- katchewan
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Scale of Compensation

The table shows the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or Invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$200 ⁴	\$60 plus sum of \$100	Under 16, \$20 each ¹	NEWFOUNDLAND Under 16, \$30 each ¹	Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$60 to consort, \$20 to each child or \$30 to orphan child unless total benefits exceed \$130 ³
\$200	\$50 plus sum of \$100	Under 16, \$15 each. ¹ Maximum to consort and children, \$110	PRINCE EDWARD ISLAND Under 16, \$25 each. ¹ Maximum \$100	As in Newfoundland. Maximum to parent or parents, \$40. Maximum in all, \$60 ²	
\$200	\$50 plus sum of \$100	Under 16, \$20 each. ¹ Maximum to consort and children, \$150	NOVA SCOTIA Under 16, \$30 each. ¹ Maximum \$150	As in Newfoundland. Maximum \$45 each. Maximum in all, \$60 ²	
\$200 ⁴	\$50 plus sum of \$100	Under 18, if attending school, \$12 each ¹	NEW BRUNSWICK Under 18, if attending school, \$25 each ¹	As in Newfoundland. ²	70% of \$3,000 per year ³
\$200 ⁴	\$55 plus sum of \$200	Under 18, \$20 each ¹	QUEBEC Under 18, \$30 each ¹	As in Newfoundland. ²	75% of earnings. Minimum \$75 to consort and one child; \$95 if more ³
\$200 ⁴	\$75 plus sum of \$200	Under 16, \$25 each ¹	ONTARIO Under 16, \$35 each ¹	As in Newfoundland. Maximum \$100 ²	Average earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$200 ⁴	\$50 plus sum of \$200	Under 16, \$20 each ¹	MANITOBA Under 16, \$30 each ¹	As in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ²	75% of earnings. Minimum \$50 to consort; \$70 to consort and one child; \$90 if more ³

\$250 ⁴	\$75 plus sum of \$250	Under 16, \$25 each ¹	SASKATCHEWAN		Average earnings. Minimum \$75 to consort; \$100 to consort and one child; \$115 to consort and two children and \$10 for each additional child. ³
			Under 16, \$35 each ¹	As in Newfoundland. ²	
\$200 ⁴	\$60 plus sum of \$150	Under 16, \$30 each ¹	ALBERTA		
			Under 16, \$30 each plus an amount not exceeding \$10 to any child under 18. ¹	As in Newfoundland. Maximum to parent or parents, \$50. Maximum in all, \$85	
\$250 ⁴	\$75 plus sum of \$100	Under 16, \$25 each ¹ ; if attending school, \$25 between 16 and 18 years	BRITISH COLUMBIA		
			Under 18, \$30 each ¹ ; \$27.50 if able to attend school between 16 and 18 years and not attending	(a) As in Newfoundland. Maximum \$75 to parent or parents. Maximum in all, \$75 (b) If there is widow or invalid widower or orphans, maximum to parent or parents, \$75 ¹	

1. In Manitoba, Alberta, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, payments to children may be made up to 18 years if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

2. In all provinces compensation in these cases is continued only so long as Board considers workman would have contributed to support.

3. For maximum earnings that may be reckoned, see Table 2, Column 5.

4. For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta and British Columbia may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Manitoba, compensation may include payment for a burial plot, not exceeding \$50.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT			TEMPORARY		Maximum Earnings Reckoned
Total	Partial	Total	Partial		
75% of earnings. Minimum \$65 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	NEWFOUNDLAND 75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability ^{1,2}	\$3,000 per annum	
75% of earnings. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident ^{1,2,3}	PRINCE EDWARD ISLAND 75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less ³	75% of difference in earnings before and after accident for duration of disability ^{1,2,3}	\$2,700 per annum	
70% of earnings. Minimum \$100 per month	70% of difference in earnings before and after accident. If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹	NOVA SCOTIA 70% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	70% of difference in earnings before and after accident for duration of disability ^{1,2}	\$3,000 per annum	
Average earnings but not in excess of 70% of \$3,000	Amount determined by Board based on impaired earning capacity	NEW BRUNSWICK 70% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 70% of diminution of earning capacity for duration of disability	\$3,000 per annum	
75% of earnings. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident ^{1,2}	QUEBEC 75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$4,000 per annum	
75% of earnings. Minimum \$100 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	ONTARIO 75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum	

MANITOBA		75% of difference in earnings before and after accident ¹	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ¹	\$3,500 per annum
SASKATCHEWAN		Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	\$5,000 per annum
ALBERTA		Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury ¹	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability	\$4,000 per annum
BRITISH COLUMBIA		Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ¹	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability	\$4,000 per annum

1. If earning capacity is diminished 10% or less, (5% or less in Alberta) a lump sum may be given.

2. The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

3. The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.

4. Where compensation to workman with dependants would be less than \$1,200 a year, the Board may increase compensation in respect of dependants by specified monthly amounts. In such cases, total amount payable may not exceed \$1,200 a year.

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EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

Price 25 cents Cat. No. L 2-658

CONTENTS

	PAGE
Introduction	5
Changes in Workmen's Compensation Laws in 1957 and 1958	7
Individual Liability	11
Federal Government Employees	13
Blind Workmen	14
Workmen's Compensation Boards	14
Cost of Administration	15
Scope of Laws	16
Farm Labourers and Domestic Servants	18
Clerical and Casual Workers and Outworkers	19
Seamen	19
Risks Covered	20
Occupational Diseases	21
Waiting Period	22
Medical Aid	22
First Aid	25
Rehabilitation	25
Accidents Occurring Outside the Province	25
Non-resident Workmen and Dependants	28
Security for Payment of Compensation	29
Accident Prevention	29
International Labour Conventions and Recommendations	32
Occupational Diseases Compensated by Provinces	35
Scale of Compensation	39

Workmen's Compensation in Canada

A Comparison of Provincial Laws in June, 1958

Introduction

Each of the ten Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p. 22); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively, the industries covered by the Act being divided into groups and the employers in each group being collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in all provinces but Nova Scotia on the basis of 75 per cent of average earnings,* and in Nova Scotia on the basis of 70 per cent of earnings, subject to the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 or 70 per cent of average earnings, as above) in the form of a monthly pension for life or, when disablement is slight, paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation. In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers and employees are given an opportunity to make representations. In Saskatchewan, the Act requires a committee equally representative of employers and organized employees to be appointed by the Lieutenant-Governor in Council every four years, and a committee reviewed the Act in 1954. The Alberta Act is usually reviewed every four years. A special committee of the Legislature was established for this purpose in 1955. In recent years Royal Commissions were appointed to inquire into the operation of the Ontario and British Columbia Acts. The reports of Mr. Justice Roach in Ontario and of Chief Justice Sloan in British Columbia were made in 1950 and 1952, respectively. Judicial inquiries are presently being conducted in Manitoba and Nova Scotia, and interim reports of the Hon. W. F. A. Turgeon in Manitoba and Mr. Justice McKinnon in Nova Scotia were presented at the 1958 legislative sessions.

Only the main points of the legislation are covered in this analysis. The scale of benefits and the occupational diseases which are compensated are set out in tables at the end of the bulletin. A summary of the provisions of the Conventions and Recommendations of the International Labour Conference on workmen's compensation permits a comparison between I.L.O. standards and the provincial statutes.

*In New Brunswick, the 75 per cent rate provided for in a 1958 amendment to the Act will not take effect until January 1, 1959.

Changes in Workmen's Compensation Laws in 1957 and 1958

Comparatively few changes were made in the provincial workmen's compensation laws in 1957. Five laws—those of New Brunswick, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan—were amended. British Columbia passed a Blind Workmen's Compensation Act of the type in effect in seven other provinces. The federal Merchant Seamen Compensation Act was amended, bringing benefits into line with those paid under the provincial workmen's compensation Acts, which have been substantially revised in recent years to take into account increases in average earnings and living costs.

At the 1958 sessions of the Legislatures, the Acts of Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan were amended. The changes made in the provincial Acts in 1957 and 1958 are described below.

MANITOBA

Amendments in *Manitoba* in 1958 giving effect to the recommendations of the interim report of the Hon. W. F. A. Turgeon, the Judicial Commissioner appointed in 1957 to inquire into the Workmen's Compensation Act, increased the compensation payable to widows or invalid widowers and dependent children. The increases were made retroactive in effect. They apply to all widows, invalid widowers and dependent children receiving compensation on April 10, 1958, the date of the coming into force of the amending Act.

The monthly allowance to a widow or invalid widower was raised from \$50 to \$65, and the payment in respect of a dependent child under 16 was raised from \$20 to \$25. In addition to the increases recommended by the Commission, an increase from \$30 to \$35 in the payment for an orphan child was provided for.

In line with the above, appropriate changes were made in the section of the Act which places a maximum on the amount of compensation payable in death cases. The section provides, as before, that, exclusive of burial and transportation allowances and the lump sum to the widow, compensation may not exceed 75 per cent of the average monthly earnings of the deceased workman, subject to the exception that a widow or invalid widower who is the sole dependant must now receive \$65 a month, a consort with one child \$90, and a consort with two or more children not less than \$115 a month.

The Act stipulates, with respect to a widow or widower who has three or more children, that the increases in compensation resulting from the amendments will apply, subject to the statutory limitation of 75 per cent of the workman's earnings.

The Legislature provided that the moneys necessary to provide for the increases in compensation were to be paid from the Accident Fund, except with respect to dependants of deceased workmen who had been employed by the C.N.R., the C.P.R., the provincial Government, the City of Winnipeg, or the corporation of any other municipality, in which case the cost of the increases in pensions was to be borne by the employer.

NEWFOUNDLAND

At the 1958 legislative session the *Newfoundland* Board was authorized to provide an injured workman with academic or vocational training to enable him to resume his former employment or to enter new employment. The Board's total expenditures for such training may not exceed \$25,000 in a year. This amendment was made effective from July 1, 1957. The Board already had authority to spend up to \$15,000 in a year for rehabilitation purposes.

A second amendment provided that the secretary, chief medical officer and assistant medical officers of the Board should be appointed by the Lieutenant-Governor in Council (instead of by the Board), and that such officers should hold office during pleasure. Other officers may, as before, be appointed by the Board, but appointments may only be made to posts which the Board has established with the approval of the Lieutenant-Governor in Council. As before, salaries of officers and employees of the Board are to be fixed by the Board in accordance with a scale approved by the Lieutenant-Governor in Council and are to be paid from the Accident Fund.

NEW BRUNSWICK

In *New Brunswick* in 1957 the maximum annual earnings on which compensation is based were increased from \$3,000 to \$4,000, effective from January 1, 1958, and all children's allowances were raised to the present scale of \$12 a month, regardless of the date of the accident which caused the death of the workman. The change in children's payments was effective from January 1, 1957. Children's allowances in New Brunswick are paid to the age of 18 so long as the child attends school.

In 1958 the rate of compensation for disability was raised from 70 to 75 per cent of earnings, effective from January 1, 1959.

It was further provided that, effective from June 1, 1958, the pensions of widows or invalid widowers who were being paid according to lower scales of benefits should be raised to the current level of \$50 a month, the money for the increases to be provided out of the Consolidated Revenue Fund.

The Legislature also authorized the spending of an increased amount for the rehabilitation of injured workmen. The Board may now spend up to \$50,000 in a year, instead of \$15,000, for this purpose.

Lastly, the Board was empowered to make safety regulations, subject to the approval of the Lieutenant-Governor in Council, for the industries of construction, demolition and excavation and other related work.

A 1958 amendment to the Act passed in 1955 making special provision for compensation for workmen who contracted silicosis before June 1, 1948, when it was made a compensable industrial disease under the Workmen's Compensation Act, raised the payment under the Act to a disabled workman (or his widow) from \$40 to \$50 a month. Funds for this purpose are provided from the Consolidated Revenue Fund. The Act is administered by the Workmen's Compensation Board.

NOVA SCOTIA

In 1957 the *Nova Scotia* Legislature authorized the appointment (by the Lieutenant-Governor in Council, on the recommendation of the Minister of Labour) of a Workmen's Counsellor, whose remuneration will be paid from the Consolidated Revenue Fund, to assist injured workmen, at their request, in preparing and presenting their claims for compensation. An officer with similar functions has been appointed in recent years in British Columbia and Manitoba.

Another amendment authorized the Minister to appoint a board of three qualified doctors to review any case involving a disputed medical question. A board is not to review a case, however, which has been dealt with by a medical referee. The Workmen's Compensation Board is required to accept and act upon the decisions of the review board. The remuneration of the members of a board is to be paid from the Accident Fund.

In 1958 the express provision in the Act for continuance of a long-established arrangement in the coal industry, whereby medical aid was provided at the expense of workmen through a weekly payroll deduction in consideration of the employers' contributions to miners' relief societies and hospitals in the coal mining area was deleted, to take effect from January 1, 1959. Abolition of the system, which chiefly affects employees of the Dominion Steel and Coal Corporation and its subsidiaries, was recommended in the interim report of Mr. Justice A. H. McKinnon, the Commissioner inquiring into the Workmen's Compensation Act.

As re-enacted, Section 91 permits the Board to approve an alternative plan for medical aid to that provided in the Act. Where medical aid is being provided through an arrangement under which the employer contributes and which the Board approves, the Board may reduce the employer's assessment to the extent of the value, in the Board's opinion, of his contribution under the arrangement.

ONTARIO

In 1958 the *Ontario* Legislature authorized an increase from \$200 to \$300 in the allowance granted under the Act for burial expenses. The lump sum payment to a widow upon the death of her husband was also increased from \$200 to \$300.

As in other provinces, the Board has authority to supply artificial members and prosthetic appliances to injured workmen and to have them kept in repair or replaced, when necessary. An artificial member or apparatus which is damaged as a result of an accident arising out of and in the course of employment may also be repaired or replaced by the Board. It was provided further, in the 1958 amendments to the Act, that, where a workman is unable to work because of damage to an artificial limb or apparatus, he is entitled to compensation for the time lost from work, as though he had suffered a personal injury by accident.

As a means of securing compliance with its first aid regulations (which were revised and strengthened in 1957), the Board was given power to increase the amount of assessment of an employer who has failed to live up to the requirements of the regulations. Under the same section of the Act (Section 84), the Board has power to use this means of penalizing an employer when it considers that sufficient precautions are not taken to prevent accidents or that working conditions are not safe.

A final amendment brought hospitals operated by a municipality within the collective liability system (Schedule 1 of the Act). Previous to this amendment, other hospitals (all except those which were municipally-operated) were required to contribute to the Accident Fund. Henceforth, all hospitals in the province will be compulsorily covered by the Act.

PRINCE EDWARD ISLAND

In 1957 in *Prince Edward Island*, the monthly allowance in respect of a child was raised from \$15 to \$20, and the maximum monthly amount payable to a widow and children was changed accordingly from \$110 to \$130. An increase from \$25 to \$30 was provided for an orphan, and the monthly maximum to a family of orphans was raised from \$100 to \$120. A further amendment enables the Board to pay compensation in respect of a child who is over 16 and under 18 at the time of his father's death in order to assist in furthering his education. Previously, the Board had authority to continue payments for such purpose if the child had been receiving compensation before the age of 16.

In 1958 the Act was amended to increase from \$2,700 to \$3,000 the maximum annual earnings on which compensation is based.

A second amendment increased from \$130 to \$170 the maximum monthly amount payable to a widow and children, enabling compensation to be paid in respect of a maximum of six children.

The compensation payable in death cases (exclusive of burial expenses) is restricted, however, to 75 per cent of the average earnings of the deceased workman, but, by a further amendment, the Board was given discretion to waive the 75 per cent restriction where circumstances require it and to pay compensation according to the scale provided in the Act, that is, \$50 a month for the widow and \$20 in respect of each dependent child under 16, subject to a maximum of \$170 a month.

QUEBEC

Amendments to the *Quebec* Act at the 1957 session dealt with pension payments to members of the Workmen's Compensation Commission.

SASKATCHEWAN

In *Saskatchewan*, an increase of \$10 a month in children's payments was provided for in 1957, bringing the monthly allowance to a child in the care of a parent to \$35, and that payable to an orphan to \$45. The increases were made applicable to all payments of children's allowances after May 1, 1957, regardless of the date of the accident.

A further amendment added to the specific powers of the Board in the field of accident prevention the general authority "to take such measures and make such expenditures as the Board deems necessary or expedient for the prevention of accidents to workmen".

In 1958 the section of the Act providing for the appointment of a Committee of Review at least once every four years to study and report on the Act and its administration was amended to strike out the provision for Workmen's Compensa-

tion Board representation on the Committee. The Committee must, as before, be equally representative of employers and organized employees. In 1954, the last occasion on which a committee was set up, a commissioner of the Board acted as chairman.

Individual Liability

In addition to the general systems of collective liability, laws of the individual liability type providing for the payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing industry in Newfoundland, in employments under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however, the employer is required to pay compensation on the finding of a court to that effect whereas the adjudication under the territorial ordinances is made by the Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund but contribute their proportion of the costs of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund, and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in fishing or dredging shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or burial expenses but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the course of employment are compensated without recourse to the law courts, are protected in some measure by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

As amended in 1955, both Ordinances provide that, with respect to accidents occurring on or after January 1, 1956, a widow is to receive a lump sum of \$300 and \$75 a month until re-marriage or death. For each dependent child under the age of 16 a monthly allowance of \$25 is payable, to be increased by an additional payment not exceeding \$10 a month, at the discretion of the Referee, where a child is an orphan. Compensation where the only dependants are persons other than widow and children is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case

he may not receive less than \$25 a week or his full earnings, if less than \$25. For a workman with a permanent partial disability, compensation is a proportion of 75% of his average earnings, depending on impairment of earning capacity as a result of the injury. In computing average earnings with respect to an accident occurring on or after January 1, 1956, \$4,000 a year is the maximum amount which may be taken into account.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

In 1958 amendments to both Ordinances (to be proclaimed in effect by the Commissioner), the Referee was given authority to require payment by the employer or insurer of the expenses of occupational re-training of a permanently disabled workman, up to an amount not exceeding \$5,000.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 19.

Federal Government Employees

The Government Employees Compensation Act, which was first enacted in 1918, provides for the payment of compensation, medical and hospital expenses and other benefits to employees of the Government of Canada for disablement from accident or industrial disease arising out of their employment. In the case of the death of the employee from such accident or disease, his dependants are entitled to compensation under the Act. The general principle of the Act is that the compensation benefits payable to an employee of the Crown are to be the same as those provided for employees employed in private industry under the workmen's compensation law of the province in which the employee is usually employed. Thus a federal employee employed in the province of Saskatchewan is paid compensation according to the scale of benefits payable under the Saskatchewan Act, and an employee in British Columbia according to the British Columbia scale of benefits.

The right to and the amount of compensation are determined, in accordance with the terms of the provincial law concerned, by the provincial Workmen's Compensation Boards which, by arrangement, handle the adjudication of claims under the federal Act as the agents of the federal Government. The boards pay compensation, medical, hospital and other expenses from deposit accounts maintained with them by the federal Government. The federal Government also pays a share of the total administrative costs in each province.

Federal Government employees are eligible for compensation under the Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed, and the dependants of an employee whose death is caused by such a disease, are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta. Claims of such employees are handled by the Alberta Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in the province of Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the scale of benefits provided for in the Ontario Act.

"Employee" under the Act covers persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers or employees of any board, commission or corporation established to perform a function or duty on behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be "employees" for the purposes of the Act.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be within the scope of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenal Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

The Minister of Labour has authority under the Act to promote accident prevention activities and safety programmes in the public service.

Blind Workmen

In Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan, there are special statutes, and in Quebec there are special provisions in the Workmen's Compensation Act, dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen's Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other seven provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

Workmen's Compensation Boards

Each Workmen's Compensation Act is administered by a board of three members, five in Quebec, called the Workmen's Compensation Board, or in Quebec, Workmen's Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Manitoba and Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen's Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board. Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

Cost of Administration

In each provincial Act except that of New Brunswick it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund. In New Brunswick, the Act provides that the salaries of Board members and other costs of administration are to be paid from the Consolidated Revenue Fund, unless the Lieutenant-Governor in Council orders payment of any portion from the Accident Fund.

The British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Quebec Acts provide that an annual grant may be made to the Board from the Consolidated Revenue Fund to assist in defraying expenses of administration. In most provinces a grant was made by the Government in the early years of operation of the Acts to assist in organizing the work and meeting initial

expenses, but no financial assistance is now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

Scope of Laws

The provincial Workmen's Compensation Acts vary in scope but, in general, they all cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops are covered in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan; hotels and restaurants are covered in the same provinces. Hospitals are within the scope of the Alberta, British Columbia, Newfoundland, New Brunswick, Ontario and Saskatchewan Acts; nursing homes are covered in British Columbia and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island. The operation of an office building or a building rented for manufacturing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is under the British Columbia, Newfoundland and Saskatchewan Acts. Janitors and caretakers are covered in Newfoundland, New Brunswick and Prince Edward Island. Transport by air is expressly included in British Columbia, New Brunswick, Ontario and Prince Edward Island. In Manitoba, it is included when carried on by certain subsidiaries of the Canadian Pacific Railway Company. In New Brunswick, however, the industry is only included if 200 workers are employed, and in Prince Edward Island, if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

There are also variations with respect to other industries and occupations. In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the

industries and occupations covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer parlours. The other Acts cover a somewhat narrower range of industries and occupations but their field of application is widened from time to time by the addition of new industries and classes of workers. The scope of the Acts is also affected through the power given in all provinces but Alberta and British Columbia to exclude small establishments. Some undertakings have been excluded unless more than a specified number of employees are employed.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia, Manitoba and Quebec. In other provinces, e.g., Alberta, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to casual workers and workers employed in the industry of farming or ranching, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Boards, except in British Columbia, have power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia. The Manitoba Board has not exercised its power to exclude small industries while, on the other hand, the Nova Scotia Board has excluded all industries employing less than five persons, and in Newfoundland and Prince Edward Island, all those employing less than three

persons are excluded. In Newfoundland, New Brunswick, Prince Edward Island, Quebec and Saskatchewan, regulations exclude specific industries unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded notifies the Board that he wishes to be included, the undertaking must be admitted. In Quebec, only by notification by the employer is the Board required to include the undertaking in the collective liability scheme. In Saskatchewan, application by employer or workman in these cases must be approved by the Board.

FARM LABOURERS AND DOMESTIC SERVANTS

Certain classes of workers, although they are expressly excluded by some of the Acts may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, clerical and casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application. In New Brunswick, by a 1955 amendment which will be proclaimed in force, provision was made for persons employed as farm workmen to be brought under Part I on the application of the employer. Domestic servants are excluded, subject to provision for admission on the application of the employer.

The provisions in the Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries and domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers may be brought within it. Domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of these provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

CLERICAL AND CASUAL WORKERS AND OUTWORKERS

In Manitoba, clerical workers who are employed in industries which are under the Act and who are not exposed to the hazards of the industry are excluded from Part I but they may be brought within the Act on the application of the employer; in the other provinces, clerical workers are eligible for compensation.

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home, are outside the scope of the collective liability system in all provinces. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, these two classes may be brought within the scope of the Act under the conditions outlined on page 17. In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

SEAMEN

The Merchant Seamen Compensation Act, 1946, provides for compensation to a disabled seaman or to dependants of a deceased seaman in case of an accident arising out of and in the course of employment. It applies to seamen, excluding pilots, apprenticed pilots and fishermen, employed on a ship of Canadian registry or on a ship chartered by demise to a person resident in Canada or having his principal place of business in Canada when such ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and must cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board (composed of three officers of the public service), which administers the Act. Payment, in accordance with the scale set out in the Act, is made by the employer direct.

Compensation is not payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act, nor is compensation payable where an accident does not disable a seaman for a period of at least four days. Medical aid is provided, however, for short periods of injury.

Benefits under the Act were substantially increased in 1957. The rate of compensation for disability was raised from 66½ to 75 per cent of average earnings, and the maximum yearly earnings to be taken into account for purposes of compensation were increased from \$3,600 to \$4,500. As a result of these two amendments, a seaman who is totally disabled may receive compensation at the rate of \$3,375 a year, assuming that his earnings are \$4,500 or more.

In a fatal case, a widow now receives, under the Act as amended, an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until re-marriage. A monthly allowance of \$25 is paid for each dependent child under 18 years or \$35 for each orphan child. A maximum of \$200 is allowed for burial expenses, if they are not borne by the employer in accordance with the Canada Shipping Act, and up to \$125 for transportation and other expenses incurred in transferring the body to the place of interment.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec Workmen's Compensation Acts, but in some provinces they have been excluded by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the federal Act come from the four Atlantic provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts stipulate that medical aid is not payable under their provisions. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman, when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (page 24).

Risks Covered

Where in any employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury

is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement. This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Manitoba, Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia Act has a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious and wilful misconduct and did not result in the workman's death.

In all the provinces but New Brunswick the word "accident" is defined to include "a wilful and an intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". Under the New Brunswick Act, "accident" means an unlooked for mishap or untoward event which

is not expected or designed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, compensation is payable for injury by lightning, and the Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan Acts expressly include frostbite resulting from the workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be, it shall be presumed that his death was the result of an accident arising out of his employment unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine, (in Nova Scotia, of a coal mine).

OCCUPATIONAL DISEASES

In addition to accidents, certain occupational diseases give a workman the right to compensation in all the provinces, "if the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement whether under one or more employments". In Manitoba and Ontario, any disease peculiar to an industrial process, trade or occupation is compensable and in Alberta, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In all provinces but Alberta, it is stipulated that compensation shall not be paid if, at the time of entering into the employment, the workman had wilfully and falsely represented himself as not having previously suffered from the disease. In British Columbia, Manitoba, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

The diseases for which compensation is payable are set out in a schedule to each Act, or, in New Brunswick and Ontario, in the regulations of the Board. The Board in every province is given authority to add to the schedule and in most cases other diseases have been added to the original list. In New Brunswick, the Board was empowered to determine by regulation all the diseases to be compensated. The occupational diseases which are compensable under the provincial Acts are shown in tables beginning at page 35.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an occupational disease, and, if he refuses or fails to do so, the employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. In Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan, silicosis is compensated under certain conditions, that is, the workman must have been employed for a stated period in employment where he was exposed to silica dust either in a specified industry or, in Manitoba and Nova Scotia, in any industry within the scope of Part I of the Act. In Newfoundland, New Brunswick and Prince Edward Island, silicosis is included in the schedule of industrial diseases; it is compensated in Newfoundland if it occurs in mining and in Prince Edward Island if it occurs in any process involving the inhalation of silica dust.

Waiting Period

Each Act provides for a "waiting period", which varies from one to seven days.

In Alberta and Saskatchewan, the waiting period is one day, that is, no compensation is payable for a disability that lasts only for the day of the accident but, if the worker is disabled for any longer time, compensation is payable from and including the day after the accident.

The British Columbia and Manitoba Acts provide for a waiting period of three days and a qualifying period (six days in British Columbia and seven days in Manitoba) at the expiration of which compensation is payable from the date of the accident. A worker in British Columbia whose disability lasts six days or less cannot recover compensation for the first three days of his disability. Only if a disability lasts longer than six days is compensation payable from the day of the accident. Similarly, an injured worker in Manitoba has to be off work longer than seven days in order to be eligible for compensation from the date of the accident.

In Newfoundland, New Brunswick and Prince Edward Island, the waiting period is four days; in Nova Scotia, Ontario and Quebec, it is five days. Workers receive no compensation, therefore, for short periods of disability, that is, less than four days in Newfoundland, New Brunswick and Prince Edward Island, and less than five days in Nova Scotia, Ontario and Quebec. Where the disability continues beyond the waiting period, compensation is payable from the date of the lay-off.

Under all the Acts, medical aid is given from the date of the accident.

Medical Aid

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they may be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiropody Act and in Alberta and Saskatchewan, the term includes treatment by any person licensed under provincial law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners", defined as persons registered under the Chiropody Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In all other provinces,

the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. Workmen are entitled to have such apparatus kept in repair or replaced as the Board deems necessary or, in Alberta, British Columbia and Manitoba, as long as disability continues. The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan provide not only for repair and renewal of artificial members or appliances in case of ordinary wear and tear but also for replacement and repair of members and appliances which are broken in an accident arising out of and in the course of employment, and the Ontario Act provides further that, where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident.

The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicines and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, the Board may replace and repair eye-glasses broken by an accident arising out of employment. The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta and Ontario, provision is made in permanent total disability cases for such other treatment, services or attendance as may be necessary as the result of the injury.

The Board is authorized to make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the allowance authorized to be paid is \$6 a day. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, the statutes in New Brunswick and Ontario merely stipulate that a workman must, if required by his employer, submit to a medical examination by a physician chosen and paid by his employer. The implication is that in the first instance he may choose his own doctor. In Quebec, the Act expressly states that a workman may select his physician. In Alberta, British Columbia and Manitoba, the Board is authorized to permit the workman to be treated by his own physician and this is the usual practice provided one reasonably near is chosen.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In Alberta, in cases of dispute, the Board, if requested by the workman in writing, must nominate not less than four

recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of them to conduct the examination. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board. Similar provision for a medical appeal is made in British Columbia where a workman who requests a further examination must be examined by a specialist selected by himself from a list of specialists provided by the Board. In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a disputed medical question, and its findings must be accepted and acted upon by the Workmen's Compensation Board.

In all provinces the fees for medical aid are fixed by the Board.

EMPLOYERS' SCHEMES FOR MEDICAL AID

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Act states that employers' schemes for medical aid may be approved subject to such conditions as the Board may impose. In Newfoundland, New Brunswick, Prince Edward Island and Quebec, the Acts stipulate that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board. In Nova Scotia, a long-established arrangement in the coal industry under which medical aid was provided at the expense of the workmen in consideration of the employers' contributions to miners' relief societies, which constitute virtually an insurance plan providing benefits in sickness and for dependants in case of death, is to be discontinued from January 1, 1959.

MEDICAL AID FOR SEAMEN

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under its provisions for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V

of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

First Aid

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

Rehabilitation

To aid in getting men back to work and in lessening any handicap, a Board may adopt any means considered expedient and pay the cost from the Accident Fund. Except in Alberta, British Columbia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$5,000 in Prince Edward Island; \$10,000 in Manitoba; \$15,000 in Newfoundland; \$20,000 in Nova Scotia; \$50,000 in New Brunswick; \$100,000 in Quebec; and \$200,000 in Ontario. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in re-training and rehabilitation. In 1958 the Newfoundland Board was given authority to spend up to \$25,000 in a year for academic or vocational training for injured workmen.

Accidents Occurring Outside the Province

The Act in each province makes some provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs outside the province if the place or chief place of business of the employer and the residence and usual place of employment of the workman are in the province and provided that employment out of the province has lasted less than six months. In Ontario, however, an extension of coverage beyond the six-month period may be granted by the Board at the request of the employer.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province followed employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits).

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight months. In these three provinces and in Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is outside the province merely for some casual and incidental purpose connected with his employment provided that he is a resident of the province and his employer has his place of business within its boundaries. A similar provision in the Ontario Act entitles a workman to compensation if his usual and principal place of employment is in Ontario even though his residence is outside the province.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if the place or chief place of business of the employer is in the province. In Manitoba, members of a fire brigade or other municipal employees are eligible for compensation under this section of the Act for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation for an accident which occurs outside the province where he is required to perform his work both in and out of the province, and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident in Ontario to compensation for an accident which happens out of Ontario on a ship registered

in Canada or on one of which the owner or charterer has his chief place of business in Ontario whether or not the workman had been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that, where a workman is engaged in work part of which is to be performed in the province and part in an adjoining province or country, the work is considered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workman is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province or country in which the accident occurred as well as under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay any other Board for any payment of compensation made under such an arrangement. In Manitoba, where a workman's employment requires him to be regularly outside the province, the Board may arrange with the employer and the Board of the other province the premium to be paid to each Board.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another, and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

Non-resident Workmen and Dependants

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law stipulates that, where compensation is payable to dependants residing outside of Canada, the Board may award a smaller sum if, in its opinion, they can be maintained on such smaller sum in a like degree of comfort as dependants of the same class in Canada. The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in the Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependant of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under that law resided in one of these provinces and in

Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

Security for Payment of Compensation

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which, under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the preceding three months and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

Accident Prevention

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice

must be given, and the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. Safety regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. The New Brunswick Board was given authority by a 1958 amendment to the Act to make regulations, subject to the approval of the Lieutenant-Governor in Council, for the prevention of accidents and the taking of safety measures in the industries of construction, demolition and excavation.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where, in the Board's opinion, conditions of immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures are taken.

In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases, and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. An accident prevention committee must be organized in every plant in Alberta and Newfoundland employing 10 or more workmen, and in every plant in British Columbia with 20 or more employees.

In the Acts of New Brunswick, Nova Scotia, Ontario and Quebec the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations, organized under the authority of the Act for that purpose. The associations operate on funds received from the Workmen's Compensation Board but all such funds are charged against the industries in the class or classes which the association represents. In New Brunswick and Nova Scotia, one accident prevention association covers each province. In Ontario, employers in 17 of the classes of industry covered by the Act (representing practically all manufacturing except paper-making) are associated in one body, called the Industrial Accident Prevention Associations. Seven classes of industry, construction, pulp and paper, lumbering, mining, electrical work, transportation and highway construction, have separate associations. In Quebec, employers in pulp and paper, lumbering, metal mining and public utilities are organized in separate associations, and employers in other classes are associated in one body, the Industrial Accident Prevention Association.

The Newfoundland and Saskatchewan Acts, in addition to vesting wide authority for accident prevention in the Board, as noted above, provide for the setting up of accident prevention associations (associations of employers in Newfoundland, associations of employers and workmen in Saskatchewan). The Prince

Edward Island Act also makes provision for the formation of associations of employers for accident prevention purposes. In Saskatchewan, accident prevention associations have been formed in a number of industries. In 1956 an industrial safety association was formed in Newfoundland to promote accident prevention in all industries under the Act.

Accident prevention associations have statutory authority to make rules for the prevention of accidents. The Newfoundland, Nova Scotia and Prince Edward Island Acts provide that, if the Board approves the rules, they become binding upon all employers in the class or classes, whether members of the association or not. In New Brunswick, Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers (in Saskatchewan, employers and workmen) affected, and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. In practice, while associations may issue rules of safe work practices, they are not given binding force and there is no means of enforcing compliance with them. Most of the associations employ a staff of inspectors whose duties are to visit the industries in the membership, to advise on how to correct hazards, and to assist the employer to set up machinery within his plant for the prevention of accidents. In addition to their plant survey and injury investigation activities, the work of associations extends to all forms of safety education and safety promotion. Where an association appoints safety inspectors, the Board may pay the whole or part of their salaries out of the Accident Fund but, as already indicated, moneys paid by the Boards for such purposes are charged to the classes represented by the association concerned.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the directions of the Board, it may collect from the employer, in British Columbia, the amount of the compensation payable, not exceeding \$300 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta, Ontario, Quebec and Saskatchewan, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate, or, in Alberta and Ontario, that first aid requirements have not been complied with, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may exclude the

industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

Conventions and Recommendations of the International Labour Conference

1. ACCIDENTS

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on page 16.

2. AGRICULTURE

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council, page 18.

3. OCCUPATIONAL DISEASES

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro- and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see page 35.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

4. MINIMUM SCALE OF COMPENSATION

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits, and dependent parents and grandparents.

In the Canadian provinces compensation is payable on at least as high a scale except that in all provinces a limit is placed on the maximum earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in New Brunswick and Quebec where the normal age is 18. In New Brunswick, however, payments cease if the child does not attend school up to 18 years. Exceptions are made for invalid children in all provinces and in Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, for children continuing their education up to 18 years of age.

5. EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 28.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claim originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

6. JURISDICTION IN DISPUTES

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

Occupational Diseases

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in Manitoba and Ontario any disease peculiar to an industrial process or occupation may be compensated and in Alberta the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered.....	British Columbia
Anthrax; Arsenic poisoning or its sequelae; Lead poisoning or its sequelae; Mercury poisoning or its sequelae; Phosphorus poisoning or its sequelae.....	All provinces
Ammonia poisoning or its sequelae.....	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	British Columbia, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood.....	British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino-derivatives, anilin and others ..	Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds.....	Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work.....	Saskatchewan
Brass, zinc or nickel poisoning or its sequelae.....	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema in any process using oxyacetylene or electric arc for cutting or welding.....	British Columbia
Bursitis (see also Cellulitis)	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
—acute, elbow.....	British Columbia, Newfoundland, New Brunswick, Nova Scotia
—prepatellar	British Columbia, New Brunswick
Cadmium poisoning.....	Ontario, Quebec, Saskatchewan
Cancer arising from the manufacture, handling or use of pitch or tar.....	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae.....	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan

Carbon dioxide poisoning or its sequelae.....	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae.....	British Columbia, Newfound- land, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis, subcutaneous, hand.....	Alberta, British Columbia, New- foundland, Nova Scotia
—, —, patella	British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlor- ethylene, tetrachlorethane, trichloronaphthalene and others), poisoning by or its sequelae.....	British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning.....	Saskatchewan
Chrome poisoning.....	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using	British Columbia
Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or hand- ling cold materials.....	British Columbia
Compressed air illness.....	British Columbia, Newfound- land, New Brunswick, Ontario, Quebec, Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gases, fumes, vapours, mists or smoke.....	British Columbia
Conjunctivitis and/or retinitis due to electro- and oxy- acetylene welding.....	British Columbia, Manitoba, New- foundland, New Brunswick, On- tario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of...	British Columbia
Cyanide poisoning.....	Saskatchewan
Dermatitis and occupational ulcerations and infections of the skin	Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours	Alberta
Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manu- facturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen ..	British Columbia

Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it.....	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan
Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding	British Columbia
Glanders	Alberta, New Brunswick, Saskatchewan
Heat exhaustion	British Columbia
Infection from handling sugar.....	New Brunswick
Infected blisters from any process involving continuous friction, rubbing or vibration	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper.....	British Columbia
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	Saskatchewan
Nickel and its compounds, dermatitis in any process using	British Columbia
Nitrous fumes, poisoning by, or its sequelae	British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to.....	Saskatchewan
Pneumoconioses other than silicosis.....	Ontario
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal...	Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis-producing dust.....	British Columbia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending—Saskatchewan)	British Columbia, Saskatchewan
Poisoning in any process where there is exposure to methyl chloride	British Columbia

Poisoning caused by chemicals used in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever) from employment under Part I of the Act.....	British Columbia
Pulmonary and respiratory irritation from exposure to vapours, mists or dust.....	British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry.....	Ontario
Rhinitis from contact with allergens or chemical vapours or dust.....	British Columbia
Salmonellosis from employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act.....	British Columbia
Seal finger in handling seals or seal products.....	Newfoundland
Silicosis	New Brunswick, Prince Edward Island
Silicosis in mining	Newfoundland
Silicosis in any industry under Part I of the Act.....	Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal—Quebec).....	Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous-mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust	British Columbia
Silicosis in making pottery.....	Quebec
Staphylococcus aureus, infection by, from employment under Part I of the Act in same places of employment as for salmonellosis (see preceding page).....	British Columbia
Stone workers' or grinders' phthisis.....	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae.....	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining.....	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan
Tenosynovitis, tendonitis, inflammation affecting the sheaths and tendons (wrist only—Newfoundland and Saskatchewan)	British Columbia, Newfoundland, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist.....	British Columbia

Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear.....	British Columbia
Tuberculosis from employment under Part I of the Act in same places of employment as for salmonellosis.....	British Columbia
Tuberculosis contracted by a workman employed in a hospital, sanatorium or sanitarium to which Part I of the Act applies or in a provincial laboratory.....	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist.....	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work.....	British Columbia, Prince Edward Island, Saskatchewan
Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities).....	British Columbia, Saskatchewan
Wood alcohol, poisoning by.....	British Columbia, Saskatchewan
X-rays, radium or other radio-active substances, any disease due to exposure to.....	British Columbia, Ontario, Quebec, (ulceration or malignant disease), Saskatchewan

Scale of Compensation

The table shows the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or Invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$200 ⁴	\$60 plus sum of \$100	Under 16, \$20 each ¹	Under 16, \$30 each ¹	NEWFOUNDLAND Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$60 to consort, \$20 to each child or \$30 to orphan child unless total benefits exceed \$130 ³
\$200	\$50 plus sum of \$100	Under 16, \$20 each. ¹ Maximum to consort and children, \$170	Under 16, \$30 each. ¹ Maximum \$120	PRINCE EDWARD ISLAND As in Newfoundland. Maximum to parent or parents, \$40. Maximum in all, \$60 ²	75% of earnings, but Board may waive the 75% restriction where circumstances require it. ³
\$200	\$50 plus sum of \$100	Under 16, \$20 each. ¹ Maximum to consort and children, \$150	Under 16, \$30 each. ¹ Maximum \$150	NOVA SCOTIA As in Newfoundland. Maximum \$45 each. Maximum in all, \$60 ²	
\$200 ⁴	\$50 plus sum of \$100	Under 18, if attending school, \$12 each ¹	Under 18, if attending school, \$25 each ¹	NEW BRUNSWICK As in Newfoundland. ²	70% of \$4,000 per year. From January 1, 1959, 75% of \$4,000 per year ³
\$200 ⁴	\$55 plus sum of \$200	Under 18, \$20 each ¹	Under 18, \$30 each ¹	QUEBEC As in Newfoundland. ²	75% of earnings. Minimum \$75 to consort and one child; \$95 if more ³
\$300 ⁴	\$75 plus sum of \$300	Under 16, \$25 each ¹	Under 16, \$35 each ¹	ONTARIO As in Newfoundland. Maximum \$100 ²	Average earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$200 ⁴	\$65 plus sum of \$200	Under 16, \$25 each ¹	Under 16, \$35 each ¹	MANITOBA As in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ²	75% of earnings. Minimum \$65 to consort; \$90 to consort and one child; \$115 if more ³

\$250 ¹	\$75 plus sum of \$250	Under 16, \$35 each ¹	Under 16, \$45 each ¹ As in Newfoundland. ²	SASKATCHEWAN	Average earnings. Minimum \$75 to consort; \$100 to consort and one child; \$115 to consort and two children and \$10 for each additional child. ³
\$200 ⁴	\$60 plus sum of \$150	Under 16, \$30 each ¹	Under 16, \$30 each ¹ As in Newfoundland. Maximum to plus an amount not parent or parents, \$50. Maximum in exceeding \$10 to any all, \$85 child under 18. ¹	ALBERTA	
\$250 ⁴	\$75 plus sum of \$100	Under 16, \$25 each ¹ ; if attending school, \$25 between 16 and 18 years	Under 18, \$30 each ¹ ; (a) As in Newfoundland. Maximum \$75 to parent or parents. Maximum in all, \$75 (b) If there is widow or invalid widower or orphans, maximum to parent or parents, \$75 ²	BRITISH COLUMBIA	

¹ In Manitoba, Alberta, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, payments to children may be made up to 18 years if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

² Compensation in these cases is continued only so long as Board considers workman would have contributed to support.

³ For maximum earnings that may be reckoned, see Table 2, Column 5.

⁴ For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta and British Columbia may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Manitoba, compensation may include payment for a burial plot, not exceeding \$50.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT		TEMPORARY		Maximum Earnings Reckoned
Total	Partial	Total	Partial	
NEWFOUNDLAND				
75% of earnings. Minimum \$65 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability ^{1,2}	\$3,000 per annum
PRINCE EDWARD ISLAND				
75% of earnings. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from nature of the injury ^{1,2,3}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from nature of the injury for duration of disability ^{1,2,3}	\$3,000 per annum
NOVA SCOTIA				
70% of earnings. Minimum \$100 per month	70% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from nature of the injury. If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹	70% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	70% of difference in earnings before and after accident for duration of disability ^{1,2}	\$3,000 per annum
NEW BRUNSWICK				
Average earnings but not in excess of \$4,000	Amount determined by Board based on impaired earning capacity	70% ⁴ of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 70% ⁴ of diminution of earning capacity for duration of disability	\$4,000 per annum
QUEBEC				
75% of earnings. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or, where possible, compensation may be based on impaired earning capacity estimated from nature of the injury ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from nature of the injury for duration of disability ^{1,2}	\$4,000 per annum

75 % of earnings. Minimum \$100 per month or earnings, if less	<p>ONTARIO</p> <p>Proportion of 75 % of earnings based on impairment earning capacity estimated from nature and degree of injury or, if more equitable, 75 % of difference in earnings before and after accident.^{1,2}</p>	75 % of difference in earnings before and after accident for duration of disability. ^{1,2}	\$5,000 per annum
75 % of earnings. Minimum \$15 per wk. or earnings, if less	<p>MANITOBA</p> <p>75 % of difference in earnings before and after accident or, where deemed just, compensation may be based on impaired earning capacity estimated from the nature of the injury¹</p>	75 % of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ¹	\$3,500 per annum
75 % of earnings. ⁵ Minimum \$25 per wk.	<p>SASKATCHEWAN</p> <p>Proportion of 75 % of earnings based on impairment earning capacity estimated from nature and degree of injury or, if more equitable, 75 % of difference in earnings before and after accident.^{1,2}</p>	Proportion of 75 % of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75 % of difference in earnings before and after accident for duration of disability. ^{1,2}	\$5,000 per annum
75 % of earnings. Minimum \$25 per wk. or earnings, if less.	<p>ALBERTA</p> <p>Proportion of 75 % of earnings based on impairment earning capacity estimated from nature and degree of injury¹</p>	Proportion of 75 % of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability	\$4,000 per annum
75 % of earnings. Minimum \$25 per wk. or earnings, if less	<p>BRITISH COLUMBIA</p> <p>Proportion of 75 % of earnings based on impairment earning capacity estimated from nature and degree of injury or, if more equitable, 75 % of difference in earnings before and after accident¹</p>	75 % of difference in earnings before and after accident for duration of disability	\$4,000 per annum

¹ If earning capacity is diminished 10 % or less (5 % or less in Alberta), a lump sum may be given.

² The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

³ The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.

⁴ After January 1, 1959, 75 %.

⁵ Where compensation to workman with dependants would be less than \$1,200 a year, the Board may increase compensation in respect of dependants by specified monthly amounts. In such cases, total amount payable may not exceed \$1,200 a year.



CANADA

Workmen's Compensation in Canada

A Comparison of Provincial Laws

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THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

Price 25 cents Cat. No. L2-659

C O N T E N T S

	Page
Introduction	1
Changes in Workmen's Compensation Laws in 1959	3
Individual Liability	11
Federal Government Employees	14
Blind Workmen	15
Workmen's Compensation Boards	15
Cost of Administration	16
Scope of Laws	17
Farm Labourers and Domestic Servants	19
Casual Workers and Outworkers	19
Seamen	20
Risks Covered	21
Industrial Diseases	22
Waiting Period	24
Medical Aid	24
Employers' Schemes for Medical Aid	27
Medical Aid for Seamen	27
First Aid	27
Rehabilitation	28
Accidents Occurring Outside the Province	28
Non-resident Workmen and Dependants	31
Security for Payment of Compensation	32
Accident Prevention	32
International Labour Conventions and Recommendations	35
Industrial Diseases Compensated by Provinces	39
Scale of Compensation	43

Workmen's Compensation in Canada

A Comparison of Provincial Laws in October, 1959

Introduction

Each of the Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p.24); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively. The industries covered by the Act are divided into groups and the employers in each group are collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in all provinces on the basis of 75 per cent of average earnings, subject to the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 per cent of average earnings) in the form of a monthly pension for life or, when disablement is slight, paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation. In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers, employees and other interested parties are given an opportunity to make representations. In Saskatchewan, the Act provides for the appointment of a Committee of Review equally representative of employers and organized employees every four years, and a committee reviewed the Act in 1958. In Newfoundland, provision was made in a 1959 amendment for a review of the Act by a committee of three or more members at least once in every five years. The Alberta Act is reviewed by a special committee of the Legislature every four years. A special legislative committee was appointed for this purpose in 1959. In recent years Royal Commissions have inquired into the operation of workmen's compensation laws in Ontario, British Columbia, Manitoba and Nova Scotia. The Roach report in Ontario and the Sloan report in British Columbia were made in 1950 and 1952, respectively. The reports of the Hon. W.F.A. Turgeon in Manitoba and of Mr. Justice McKinnon in Nova Scotia were completed in 1958.

Only the main points of the legislation are covered in this analysis. The scale of benefits and the occupational diseases which are compensated are set out in tables at the end of the bulletin. A summary of the provisions of the Conventions and Recommendations of the International Labour Conference on workmen's compensation permits a comparison between I.L.O. standards and the provincial statutes.

Changes in Workmen's Compensation Laws in 1959

Seven of the provincial Workmen's Compensation Acts were amended in 1959. The Manitoba and Nova Scotia amendments implemented the recommendations of Royal Commissions, and the changes in Saskatchewan resulted from an inquiry into the Act by a Committee of Review, appointed every four years. The British Columbia Act was extensively revised and the Acts of Newfoundland, New Brunswick and Prince Edward Island were amended in several important respects. The changes made in the provincial Acts in 1959 are described below.

BRITISH COLUMBIA

In **British Columbia**, the maximum annual earnings on which compensation is paid were increased from \$4,000 to \$5,000.

The amendments also provided for a three-day waiting period. Compensation is now payable from the date of the accident for any disability which lasts longer than three days. Previously, a workman received no compensation for the first three days of his disability unless he was disabled for more than six days.

Another amendment stated that compensation for temporary partial disability is to be calculated in the same manner as compensation for permanent partial disability, that is, on the basis of the degree of impairment of earning capacity estimated from the nature and degree of the injury. Formerly, the Act provided for payment of compensation for temporary partial disability on the basis of difference in earnings before and after the accident.

It was also provided that a workman who suffers a recurrence of temporary compensable disability after April 1, 1959, as a result of an accident which occurred before December 1, 1949, is to be paid compensation on the basis of 75 per cent of his present-day average earnings, subject to the maximum specified in the Act.

A further provision allows the Board to accept partial responsibility for a disablement which may be due in part to causes other than the employment or to a pre-existing physical condition. The new provision states that, where injury or disease is in part due to the employment and in part due to causes other than the employment, or where the personal injury aggravates, accelerates or activates a disease or condition existing prior to the injury, compensation is to be allowed for such proportion of the disability as may reasonably be attributed to the personal injury sustained.

The lump sum payment to a widow was increased from \$100 to \$250, and her monthly pension was raised from \$75 to \$90 (the highest amount payable under any of the provincial Acts). Children's allowances were increased by \$10 - from \$25 to \$35 a month for a child in the care of a parent, and from \$30 to \$40 for an orphan. For dependants other than widow and children the maximum monthly allowance was raised from \$75 to \$90. Increases to widows and children are retroactive.

Dependants residing outside of Canada may be awarded compensation on a lesser scale than that provided for in the Act if, in the Board's opinion, they can

be maintained on a smaller sum in a like degree of comfort as dependants residing in Canada. Amendments to this section stipulated that the sum to be awarded is that which the Board considers would at the date of death maintain the dependants in a like degree of comfort as dependants of the same class in Canada, and that, should such dependants later take up residence in Canada, they should be paid compensation on the scale provided for a dependant resident in Canada at the time of the workman's death.

Another change was that a common law wife in receipt of compensation was given the same status as a widow with respect to the benefits payable on remarriage. A widow who remarries is, as before, eligible for a sum equal to her monthly payments for two years, subject, however, to a new maximum, \$1,500 instead of \$1,200.

The Legislature adopted a broader definition of "accident", adding to the definition common to most of the provincial statutes "a wilful and intentional act, not being the act of the workman, and ... a fortuitous event occasioned by a physical or natural cause" the words "as well as disablement arising out of and in the course of the employment and where the disablement is caused by disease the date of the accident shall be deemed to be the date of the disablement."

A change was also made in the definition of "industrial disease". Formerly limited to diseases set out in the schedule or added to the schedule by Board regulation, "industrial disease" may now include, in addition to diseases listed in the schedule, "any other disease which the Board by regulation or otherwise may designate or recognize as as industrial disease".

These amendments enable the Board to grant compensation for any accident or industrial disease which can be shown to have been due to the nature of a workman's employment.

The definition of "silicosis" was revised to make conditions for the establishment of a claim for compensation for the disease less stringent. The requirement that a diagnosis of silicosis had to be established by X-ray was removed, and a workman is required merely to show a "lessened" rather than a "substantially lessened" capacity for work. Silicosis is now defined as "a fibrotic condition of the lungs caused by the inhalation of silica dust and accompanied by a lessened capacity for work".

A reference to specific X-ray appearance was also deleted from the section of the Act empowering the Board to require an employer to have his employees medically examined at least once a year "when an industrial disease is of such a nature that its presence is evidenced by specific X-ray appearance". The Board is now empowered to order employers in an industry in which an industrial disease has been shown to exist to have new workmen examined by a physician within one month after starting work and thereafter at such intervals as required. Pre-employment and annual X-ray and medical examinations are presently required under the Metalliferous Mines Regulation Act for workmen in metal mines, asbestos mines and rock tunnelling operations.

The Act was also amended to provide that the Board may inspect any establishment to see whether proper precautions are being taken for the prevention of industrial diseases as well as accidents, and may order the installation of devices or appliances for the detection of such diseases.

One of the most significant changes made by the amending Act is its provision for a new system of review of appeal cases by a Medical Review Panel, whose decisions are to be binding on the Board. A request for such a review may be made by a workman's employer as well as by the workman himself. A request for a review must be accompanied by a doctor's certificate stating that in his opinion, there is a **bona fide** medical dispute to be resolved and defining the matter at issue.

One member of a Medical Review Panel is to be selected by the workman and one by his employer from a list of specialists prepared by a medical committee appointed by Order in Council. A Chairman of Medical Review Panels appointed by the Lieutenant-Governor in Council will constitute the third member and chairman of each Panel. The Board is required to notify the workman and the employer of the Panel's decision. Previously, provision was made for the re-examination of a workman by a single specialist of his own choosing.

The section of the Act empowering the Board to replace and repair artificial appliances, eye-glasses and dentures broken as a result of an industrial accident was amended to restrict the cases where breakage must be accompanied by objective signs of personal injury to cases of broken eye-glasses and dentures.

A change from "and" to "or" in the section dealing with rehabilitation services makes it clear that the Board may provide such services in order to aid in getting injured workmen back to work **or** to assist in lessening or removing any handicap resulting from their injuries. The wording of this section in most of the provincial Acts is "to aid in getting injured workmen back to work **and** to assist in lessening or removing any handicap resulting from their injuries".

Another amendment provided that the maximum fine which the Board may now prescribe by regulation for contravention of any of its Accident Prevention Regulations is \$500. The maximum penalty formerly prescribed by the Act was \$300.

A change was also made in the maximum amount which the Board may collect from an employer in a case where an accident is considered to be due to his negligence or failure to comply with the regulations. The employer may now be held liable for compensation costs up to a maximum of \$1,000. The former limit was \$300.

The scope of the Act was further extended by the addition of the following industries: appliance, equipment or machinery rental; motion picture production (exclusive of players and artists); operation of poultry hatcheries (where not part of farming operation); poultry processing, wholesaling of fish, meat or raw hides; film distribution; operation of auto courts, motels or tourist resorts; whaling; distribution or servicing of automatic amusement, music or vending machines or devices.

Mines and quarries were excluded from the establishments subject to safety inspection by the Board.

Another amendment prohibits the bringing of an action against any member of the Board "in respect of any act, omission or decision done or made in the *bona fide* belief that the same was within the jurisdiction of the Board".

MANITOBA

The *Manitoba* Act was generally revised, implementing the recommendations of the Turgeon Royal Commission and making several other changes.

The lump sum payable to a widow, formerly \$200, was increased to \$300, and an increase from \$65 to \$75 was provided in her monthly pension. The allowance for a dependent child was increased from \$25 to \$35 and for an orphan from \$35 to \$45 a month. Increases in compensation to widows and children were made applicable to existing pensioners as well as new ones.

The ceiling on annual earnings was increased from \$3,500 to \$4,500, and the minimum weekly payment for temporary total and permanent total disability was raised from \$15 to \$25, or earnings, if less. Workmen receiving compensation in respect of past accidents were made eligible for the increase in the minimum payment.

In a new provision, similar to one contained in the Alberta Act, the Board was given authority to apportion the degree of disability due to employment in cases where personal injury consists of a disease in part due to the employment and in part due to other causes, and to award compensation in proportion to the part of the personal injury due to the employment.

Another new section authorizes the payment of compensation for an injury sustained by a workman in work outside the scope of his employment. The Act provides that, if a workman suffers injury while performing work which he is required to do by his employer or supervisor and which is for the personal benefit of the employer or supervisor, he is entitled to compensation from the Accident Fund as if the accident arose out of and in the course of his regular employment.

A further amendment provides that, where impairment of earning capacity is less than 10 per cent, compensation is to be paid in a lump sum when requested by the workman, unless the Board considers that a lump sum payment would not be to the workman's advantage. Under the previous wording, the Board was authorized to direct that a lump sum settlement be made in all such cases, unless it appeared contrary to the workman's best interests.

Another change was the adoption of a "waiting period" of one day. As in Alberta and Saskatchewan, no compensation is payable for a disability that lasts only for the day of the accident, but if the workman is disabled for any longer time compensation begins from the day after the accident. Previously, a worker received no compensation for the first three days of his disability, unless he was disabled longer than seven days.

As in British Columbia, a broader definition of "accident" was adopted. In the Manitoba Act, as revised, "accident" means a chance event occasioned by a physical or natural cause and is defined to include: (1) a wilful and intentional act that is not the act of the workman, and (2) any event arising out of, and in the course of, employment, or thing that is done and the doing of which arises out of, and in the course of, employment; and (3) conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease; and as a result of which a workman is disabled.

This amendment extending the meaning of the word "accident" makes it possible for the Board to allow any claim for disablement, including disablement resulting from an industrial disease, which can be shown to have arisen by reason of the nature of a workman's employment. The Act provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed the date of the accident.

In view of the new definition of accident enabling the Board to award compensation where conditions in a place where an industrial process, trade or occupation is carried on give rise to an industrial disease, the provisions of the Act which set forth the conditions under which compensation was payable for industrial diseases and the schedule of industrial diseases were repealed.

"Industrial disease", as now defined, means any disease which is peculiar to or characteristic of an industrial process, trade or occupation, and it is left to the Board to decide in each individual case whether any disease for which compensation is claimed is peculiar to or characteristic of a particular industrial process, trade or occupation.

The provision setting out the conditions under which a workman is eligible for compensation for an accident occurring outside the province was amended to clarify the intent of the section by providing that compensation is only payable if the workman is not entitled to claim compensation under the law of the place where the accident occurred. The wording of the section was changed from "when...he is without Manitoba merely for some casual or incidental purpose connected with his employment" to "while the workman is temporarily engaged outside the province on the business of the employer". In such circumstances the workman is entitled to compensation if his residence and usual place of employment and the employer's place of business are in the province.

In a further amendment, the Board was empowered to extend any time-limit set by the Act or regulations, where, in its opinion, an injustice would result unless an extension of time were granted. Previously, the Act provided that no compensation was payable unless an application was filed within one year after the death of the workman. The amendment enables the Board to extend the one-year period and other time-limits set by the Act where it appears fair to do so.

A number of additional industries - retail stores, hospitals and nursing homes, hotels, restaurants and privately-owned radio stations - were brought under the Act. Clerical workers not exposed to the hazards of the industry were also brought within the scope of the Act. This group was previously excluded unless an application for coverage was made by the employer. Changes in coverage take effect from January 1, 1960.

A further amendment extended the coverage of the Act to include all provincial Government and municipal employees. Previously, the obligation to pay compensation with respect to these employees applied only to employment which would have been covered by Part I of the Act if carried on by a private employer. Government boards and commissions may apply for coverage under the elective provisions of the Act.

NEWFOUNDLAND

A new section was added to the **Newfoundland Act** requiring the Lieutenant-Governor in Council to appoint a committee at least once in every five years to review and report on the Act and its administration. The expenses of the committee of review, which is to consist of at least three members, are to be borne by the Accident fund.

NEW BRUNSWICK

The **New Brunswick Act** was amended, increasing the amount allowed for funeral expenses from \$200 to \$300, the allowance for a child under 18 (if attending school) from \$12 to \$20 a month, and the payment for an orphan child under 18 from \$25 to \$40 a month. A further change was that the minimum payment for temporary total disability was increased from \$15 to \$25 a week, or earnings, if less. The increases in benefits are effective from January 1, 1960.

Travelling salesmen were brought within the scope of the Act.

NOVA SCOTIA

Amendments to the **Nova Scotia Act** implemented the recommendations of Mr. Justice McKinnon, whose report, following an extensive inquiry into the Act, was completed in December, 1958.

As recommended by the Commissioner, the percentage rate of earnings on which awards for disability are based was raised from 70 to 75, and the maximum yearly earnings base for the computation of compensation was increased from \$3,000 to \$3,600. The minimum weekly payment for temporary total disability was raised from \$15 to \$20, or earnings, if less.

A further amendment reduced the waiting period from five to four days. Compensation is now payable from the date of the accident if a disability lasts longer than four days.

The maximum amount allowed for funeral expenses was increased from \$200 to \$250. Other amendments raised the lump sum payable to a widow from \$100 to \$150, the widow's monthly allowance from \$50 to \$60, and the monthly benefit to a dependent child under 16 from \$20 to \$22.50. The maximum monthly allowance for a widow and children was increased from \$150 to \$172.50. Increases in monthly payments to widows, invalid widowers and dependent children were made applicable to existing pensioners, and the Legislature provided that the costs of the increases should be paid from the Consolidated Revenue Fund.

Coal miners' pneumoconiosis, defined as "a fibrotic condition occasioning loss of lung function caused by inhaled coal dust combined with tuberculosis of the lung", was added to the schedule of industrial diseases, and compensation for the disease was made payable on substantially the same conditions as for silicosis. Costs of claims which were made before January 1, 1959, for disability from the disease are to be paid from the Consolidated Revenue Fund.

New provisions concerning silicosis and coal miners' pneumoconiosis were enacted. These provide that, where a workman has been exposed to silica dust or coal dust in other jurisdictions as well as in Nova Scotia, he or his dependants are entitled to benefits under the Nova Scotia Act if (a) he was a resident of Nova Scotia during the three years preceding death or disablement, and (b) if at least 50 per cent of his exposure to the dust was in an industry under the Nova Scotia Act. Where he is entitled to compensation in another jurisdiction, his Nova Scotia award must be reduced by that amount.

Subject to the same residence requirement, where more than 50 per cent of the exposure was outside the province, benefits are proportionate to the period of exposure in the province in relation to the total period of exposure.

Another amendment extended the period within which a claim for compensation for silicosis or pneumoconiosis may be made from three to five years after termination of employment. It was further provided that a claim must be made within one year after death or disability has been determined to be due to either disease.

Implementing further recommendations of the Commission, the Legislature authorized the Workmen's Compensation Board to make regulations, subject to the approval of the Lieutenant-Governor in Council, providing for (1) periodic X-ray examinations of workmen exposed to silica dust or coal dust, and the issue of certificates of fitness following such examinations; (2) the appointment of a medical board to advise the Workmen's Compensation Board regarding silicosis and pneumoconiosis claims; and (3) the carrying on of research into the causes of these diseases.

The former limit of \$20,000 per year on Board expenditures for rehabilitation of injured workmen was removed. As in several other provinces, the amount to be spent for rehabilitation purposes is now left to the discretion of the Board.

A considerable number of industries were brought under the Act. The industries added were: shipbuilding, marine railway and dry dock operations; road and street making and paving; prospecting and development of mining properties; geophysical explorations; electric wiring of buildings; installation of electrical systems and fixtures; plumbing, heating and sanitary engineering; cutting and selling of Christmas trees.

In a further amendment, the Board was empowered to establish a Second Injury Fund, the purpose of which is to relieve employers in a class of the total cost of a second accident occurring to a workman who has suffered a disability in previous employment.

Amendments designed to provide greater protection for workmen in the fishing and dredging industries were made to Part III of the Act. In these two industries the employer is liable for the payment of compensation and must carry insurance to cover his liability.

Widows and children receiving compensation under Part III on April 1, 1959, were made eligible for the increases in monthly payments provided for in Part I (from \$50 to \$60 for a widow and from \$20 to \$22.50 for a child under 16). As with the increases to existing pensioners under Part I, the Legislature provided that the costs should be borne by the Consolidated Revenue Fund.

The amendments also provided for the payment of burial expenses, as under Part I. Burial expenses were previously excluded from the definition of "compensation" under Part III. Provision was also made, as under Part I, for the inclusion in an award under Part III of a sum to enable compensation to be paid in respect of a child between the ages of 16 and 18 years to assist him to continue his education.

Further, the limit of liability for claims arising out of any one accident was increased from \$50,000 to \$200,000, and the former \$1,200 limit on the earnings of sharesmen deemed to be wages for compensation purposes was removed. As a result, fishermen and dredgers were made eligible for compensation on the basis of their actual earnings, with a maximum of \$3,600 a year, subject, however, to the limit of \$200,000 in respect of any one vessel.

PRINCE EDWARD ISLAND

An amendment to the **Prince Edward Island Act** raised the lump sum payment to a widow from \$100 to \$200.

Another amendment authorized the Workmen's Compensation Board to bring any industry under the Act by regulation.

SASKATCHEWAN

Changes in the **Saskatchewan Act** resulted from the report of the Quadrennial Committee of Review which made an inquiry into the Act in 1958.

The lump sum payable to a widow was increased from \$250 to \$300, and provision was made for payment of a sum not exceeding \$50 for a burial plot. Provision was also made for a lump sum payment not exceeding \$50, in the discretion of the Board, to each orphan child under 16 to meet the expenses arising from the death of the parent.

The Board was further empowered to make compensation payments to the age of 19 in respect of a child who is continuing his education. Formerly, payments might not be continued beyond the age of 18.

Two changes were made in the minimum amounts which the Act provides for the protection of the family of the low-paid wage-earner. Exclusive of burial expenses, the total award to the dependants of a deceased workman may not

exceed the workman's average monthly earnings, subject, however, to the payment of certain minimum amounts. These amounts are now \$75 a month to a widow; \$100 to a widow with one child; \$125 (formerly \$115) to a widow with two children and \$15 (formerly \$10) for each additional child.

The conditions under which compensation may be paid, in the discretion of the Board, to a common law wife with one or more children were changed, making her eligible for benefits if the death of the workman occurred three years or more after the commencement of the common law relationship. Previously, the minimum period of such relationship prescribed by the Act in order to qualify for benefits was five years.

The minimum weekly payment in permanent total disability cases was raised from \$25 to \$30. The same increase – from \$25 to \$30, or earnings, if less – was provided in the minimum for temporary total disability.

The increases in compensation, including the increase in the minimum weekly payment for total disability, were made applicable to all payments occurring after July 1, 1959. Thus, the higher benefits are payable to both existing and new pensioners.

The requirement that a workman whose disability or death was caused by an industrial disease due to the nature of his employment must have been engaged in the employment within the 12 months preceding his disablement was removed.

Further, the conditions laid down in the Act for the payment of compensation for silicosis were relaxed. In order to be entitled to compensation a workman must now have been exposed to silica dust in his employment in the province for periods totalling at least three years. Formerly, a period of exposure of at least five years was necessary in order to qualify for benefits.

A new section was added to the Act providing for a system of medical review in appeal cases. A workman who requests a reconsideration of his claim on medical grounds, and whose request is supported by a doctor's certificate, is given the right to be examined by a specialist of his own choice. The Act requires the Board to prepare a list of three specialists in the particular class of injury or ailment concerned, and the workman to choose one of the three to examine him. After receiving the specialist's report, the Board is required to review the claim and give the workman written notice of its decision. Time limits are laid down for the appeal procedure.

Individual Liability

In addition to the general systems of collective liability, laws of the individual liability type providing for the payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing

industry in Newfoundland, in employment under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however, the employer is required to pay compensation on the finding of a court to that effect whereas the adjudication under the territorial ordinances is made by the Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund but contribute their proportion of the costs of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund, and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in fishing or dredging shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or the right to rehabilitation, but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in

the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the course of employment are compensated without recourse to the law courts, are protected in some measure by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

As amended in 1955, both Ordinances provide that, with respect to accidents occurring on or after January 1, 1956, a widow is to receive a lump sum of \$300 and \$75 a month until re-marriage or death. For each dependent child under the age of 16 a monthly allowance of \$25 is payable, to be increased by an additional payment not exceeding \$10 a month, at the discretion of the Referee, where a child is an orphan. Where the only dependants are persons other than widow and children, compensation is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case he may not receive less than \$25 a week or his full earnings, if less than \$25. For a workman with a permanent partial disability, compensation is a proportion of 75% of his average earnings, depending on impairment of earning capacity as a result of the injury. In computing average earnings with respect to an accident occurring on or after January 1, 1956, \$4,000 a year is the maximum amount which may be taken into account.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

In 1958 amendments to both Ordinances the Referee was given authority to require payment by the employer or insurer of the expenses of occupational re-training of a permanently disabled workman, up to an amount not exceeding \$5,000.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 20.

Federal Government Employees

The Government Employees Compensation Act, which was first enacted in 1918, provides for the payment of compensation, medical and hospital expenses and other benefits to employees of the Government of Canada for disablement from accident or industrial disease arising out of their employment. In the case of the death of the employee from such accident or disease, his dependants are entitled to benefits under the Act. The general principle of the Act is that the compensation benefits payable to an employee of the Crown are to be the same as those provided for employees employed in private industry under the workmen's compensation law of the province in which the employee is usually employed. Thus, a federal employee employed in the province of Saskatchewan is paid compensation according to the scale of benefits payable under the Saskatchewan Act, and an employee in British Columbia according to the British Columbia scale of benefits.

The right to and the amount of compensation are determined in accordance with the terms of the provincial law concerned, by the provincial Workmen's Compensation Boards which, by arrangement, handle the adjudication of claims under the federal Act as the agents of the federal Government. The boards pay compensation, medical, hospital and other expenses from deposit accounts maintained with them by the federal Government. The federal Government also pays a share of the total administrative costs in each province.

Federal Government employees are eligible for compensation under the Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed, and the dependants of an employee whose death is caused by such a disease, are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta. Claims of such employees are handled by the Alberta Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in the province of Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the scale of benefits provided for in the Ontario Act.

“Employee” under the Act covers persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers or employees of any board, commission or corporation established to perform a function or duty on behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be “employees” for the purposes of the Act.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be within the scope of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenals Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

The Minister of Labour has authority under the Act to promote accident prevention activities and safety programmes in the public service.

Blind Workmen

In Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan, there are special statutes, and in Quebec there are special provisions in the Workmen’s Compensation Act, dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen’s Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other seven provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

Workmen’s Compensation Boards

Each Workmen’s Compensation Act is administered by a board of three members, five in Quebec, called the Workmen’s Compensation Board, or in Quebec, Workmen’s Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Manitoba and Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen’s Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board. Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

Cost of Administration

In each provincial Act except that of New Brunswick it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund. In New Brunswick, the Act provides that the salaries of Board members and other costs of administration are to be paid from the Consolidated Revenue Fund, unless the Lieutenant-Governor in Council orders payment of any portion from the Accident Fund.

The British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Quebec Acts provide that an annual grant may be made to the Board from the Consolidated Revenue Fund to assist in defraying expenses of administration. In most provinces a grant was made by the Government in the early years of operation of the Acts to assist in organizing the work and meeting initial expenses, but no financial assistance is now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the

Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

Scope of Laws

The provincial Workmen's Compensation Acts vary in scope but, in general, they all cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops, hotels and restaurants are covered in all provinces except Quebec. Hospitals are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Saskatchewan Acts; nursing homes are covered in British Columbia, Manitoba and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island. The operation of an office building or a building rented for manufacturing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is under the British Columbia, Newfoundland and Saskatchewan Acts. Janitors and caretakers are covered in Newfoundland, New Brunswick and Prince Edward Island. Transport by air is expressly included in British Columbia, New Brunswick, Ontario and Prince Edward Island. In Manitoba, it is included when carried on by certain subsidiaries of the Canadian Pacific Railway Company. In New Brunswick, however, the industry is only included if at least 10 workers are employed, and in Prince Edward Island, if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

There are also variations with respect to other industries and occupations. In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the industries and occupations covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer parlours. The other Acts cover a somewhat narrower range of industries and occupations but their field of application is widened from time to time by the addition of new industries and classes of workers. The scope of the Acts is also affected through the power given in all provinces but Alberta and British Columbia to exclude small establishments. Some undertakings have been excluded unless more than a specified number of employees are employed.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia and Quebec. In other provinces, e.g., Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to casual workers and workers employed in the industry of farming or ranching, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Boards, except in British Columbia, have power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia. In Manitoba and Ontario, no industries are excluded by number limit. On the other hand, the Nova Scotia Board has excluded all industries employing fewer than five persons, and the Newfoundland, New Brunswick and Prince Edward Island Boards those employing fewer than three persons. In addition to these general exclusions, regulations in Newfoundland, New Brunswick, Prince Edward Island, Quebec and Saskatchewan exclude specific industries from coverage unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded notifies the Board that he wishes to be included, the undertaking must be admitted. In Quebec, only by notification by the employer is the Board required to include the undertaking in the collective liability scheme. In Saskatchewan, application by employer or workman in these cases must be approved by the Board.

Farm Labourers and Domestic Servants

Certain classes of workers, although they are expressly excluded by some of the Acts, may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application. In New Brunswick, by a 1955 amendment, to be proclaimed in force, provision was made for persons employed as farm workmen to be brought under Part I on the application of the employer.

The provisions in the Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries and domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers may be brought within it. Domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of the provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

Casual Workers and Outworkers

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home, are outside the scope of the collective liability system in all provinces. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, these two classes may be brought within the scope of the Act

under the conditions outlined on page 18. In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

Seamen

The Merchant Seamen Compensation Act, 1946, provides for compensation to a disabled seaman or to dependants of a deceased seaman in case of an accident arising out of and in the course of employment. It applies to seamen, excluding pilots, apprenticed pilots and fishermen, employed on a ship of Canadian registry or on a ship chartered by demise to a person resident in Canada or having his principal place of business in Canada when such ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and must cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board (composed of three officers of the public service), which administers the Act. Compensation, in accordance with the scale set out in the Act, is paid directly by the employer.

Compensation is not payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act, nor is compensation payable where an accident does not disable a seaman for a period of at least four days. Medical aid is provided, however, for short periods of injury.

Benefits under the Act were substantially increased in 1957. The rate of compensation for disability was raised from 66½ to 75 per cent of average earnings, and the maximum yearly earnings to be taken into account for purposes of compensation were increased from \$3,600 to \$4,500. As a result of these two amendments, a seaman who is totally disabled may receive compensation at the rate of \$3,375 a year, assuming that his earnings are \$4,500 or more.

In a fatal case, a widow now receives, under the Act as amended, an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until re-marriage. A monthly allowance of \$25 is paid for each dependent child under 18 years or \$35 for each orphan child. A maximum of \$200 is allowed for burial expenses, if they are not borne by the employer in accordance with the Canada Shipping Act, and up to \$125 for transportation and other expenses incurred in transferring the body to the place of interment.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec Workmen's Compensation Acts, but in some provinces they have been excluded by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the Act come from the four Atlantic provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, medical aid is not payable under the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman, when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (page 27).

Risks Covered

When in an employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury

is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Manitoba, Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia Act has a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious and wilful misconduct and did not result in the workman's death.

The word "accident" is defined in most of the provincial statutes to include "a wilful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". The Alberta and British Columbia Acts refer to a "chance" rather than "fortuitous" event and add to the above definition the words "as well as disablement arising out of and in the course of the employment, and where the disablement is caused by disease the date of the accident shall be deemed to be the date of the disablement".

"Accident" in the Manitoba Act means a chance event occasioned by a physical or natural cause, but also includes (1) a wilful and intentional act that is not the act of the workman; and (2) any event arising out of, and in the course of, employment or thing that is done and the doing of which arises out of, and in the course of, employment; and (3) conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease; and as a

result of which a workman is disabled. The Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed to be the date of the accident.

In the New Brunswick Act "accident" is defined as an unlooked for mishap or untoward event which is not expected or designed and includes an accident caused by lightning, frost bite or infection from blistered hands.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is also payable for injury by lightning, and the same three Acts and the Act of Saskatchewan expressly include frostbite resulting from a workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be, it is to be presumed that his death was the result of an accident arising out of his employment, unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine (in Nova Scotia, of a coal mine). The Nova Scotia provision was amended in 1959, deleting the words "at a place where the workman had a right in the course of his employment to be".

Industrial Diseases

The Acts of all provinces give a workman the right to compensation for industrial diseases, subject to certain conditions. The Acts vary in these conditions and in the interpretation which is placed upon the term "industrial disease".

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, when a workman is disabled or his death is caused by an industrial disease, he or his dependants are eligible for compensation as if the disease were a personal injury by accident, if the disease is due to the nature of the employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments.

In Ontario and Saskatchewan, compensation is payable if the disease is due to the nature of the employment in which the workman was engaged, whether under one or more employments, but there is no requirement that the workman must have been engaged in the employment within the twelve months preceding his disablement.

In Alberta, where a workman is disabled from a disease listed in the schedule, and at some time during the twelve months previous to the disablement was employed in a process set opposite the disease in the schedule, he is presumed to have contracted it from the nature of the employment, unless the contrary is proved.

No special conditions are laid down in the Manitoba Act for the payment of compensation for industrial diseases, since the definition of "accident", as amended in 1959, covers conditions giving rise to an industrial disease.

In all provinces but Alberta and Manitoba, compensation may not be paid if, at the time of entering into the employment, the workman wilfully and falsely

represented himself as not having previously suffered from the disease. In British Columbia, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

Under the Acts, as first enacted, the diseases for which compensation was payable were set out in a schedule, or, in New Brunswick, in regulations of the Board. The Boards were given authority to add to the schedule and in most provinces other diseases have been added to the original list. In New Brunswick, the Board was originally empowered to determine by regulation all the diseases to be compensated.

Under the system of schedule coverage, if a workman is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved. The statutory presumption that a disease is due to the nature of the scheduled employment is limited to the diseases and employments named in the schedule. Where a workman claims compensation for a disease which is not listed in a schedule, the burden of proving that it was caused by the nature of his employment rests with him.

In all the Acts except the Act of Manitoba the schedule of diseases is retained but wider coverage of industrial diseases is provided in a number of provinces either by reason of a broadened definition of "accident", as in Alberta, British Columbia and Manitoba, or through the power given to the Board to award compensation in a particular case for any disease shown to be peculiar to or characteristic of an industrial process, trade or occupation.

In Alberta and British Columbia, "accident" is defined to include disablement arising out of and in the course of the employment, and the definitions provide further that, where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement.

The definition of "accident" in the Manitoba Act includes conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease, and as a result of which a workman is disabled. That Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed the date of the accident.

The British Columbia and Ontario Boards, besides being empowered to award compensation for any disease enumerated in the schedule, may recognize any disease as being a disease peculiar to or characteristic of a particular industrial process, trade or occupation.

In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories and sanatoria.

The industrial diseases which are compensable under the provincial Acts are shown in a table beginning at page 39.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an industrial disease, and, if he refuses or fails to do so, his employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. The Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Acts contain special provisions setting out the conditions (such as residence qualifications, period of exposure to silica dust) upon which compensation may be granted. In Alberta, British Columbia, Newfoundland, Ontario, Quebec and Saskatchewan, silicosis is compensable when it occurs in a specific industry or industries; in the remaining provinces compensation is payable for silicosis occurring in any employment within the scope of the Act which involves the inhalation of silica dust.

Waiting Period

Each Act provides for a "waiting period", the statutory minimum number of days during which a workman must be disabled from earning full wages in order to qualify for compensation. The waiting period under the Acts ranges from one to five days.

In Alberta, Manitoba and Saskatchewan, the waiting period is one day. No compensation is payable for the day on which an accident occurs, but if the worker is disabled for any longer time compensation is payable from and including the day after the accident.

The waiting period is three days in British Columbia; four days in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island; and five days in Ontario and Quebec. Where a disability does not extend beyond the waiting period, the workman is not eligible for compensation. Where a disability continues beyond the waiting period, compensation is payable from the commencement of the disability.

The waiting period does not restrict the right of the workman to medical aid, which, under all the Acts, is given from the date of the accident.

Medical Aid

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they must be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiropody Act, and in Alberta and Saskatchewan, the term includes treatment by any person licensed under provincial

law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners", defined as persons registered under the Chiropody Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In all other provinces, the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. Workmen are entitled to have such apparatus kept in repair or replaced as the Board deems necessary or, in Alberta, British Columbia and Manitoba, as long as disability continues. The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan provide not only for repair and renewal of artificial members or appliances in case of ordinary wear and tear but also for replacement and repair of members and appliances which are broken in an accident arising out of and in the course of employment, and the Ontario Act provides further that where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident.

The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicines and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, the Board may replace and repair eye-glasses broken by an accident arising out of employment. With regard to broken dentures and eye-glasses, the British Columbia Board has authority to assume the expense of replacement and repair only "if such breakage is accompanied by objective signs of personal injury", and the Saskatchewan Board will do so "when breakage is occasioned by an accident in which the workman is injured sufficiently to require medical attention for which the board accepts responsibility". The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta and Ontario, provision is made

in permanent total disability cases for such other treatment, services or attendance as may be necessary as a result of the injury.

The Board is authorized to make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the allowance authorized to be paid is \$6 a day. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, in Alberta, British Columbia, Manitoba and Quebec, the Board is authorized to permit the workman to be treated by the physician of his own choice (in the British Columbia and Manitoba Acts, "the physician who may be selected or employed by the injured workman or his employer"). While the other Acts make no mention of choice of doctor, the usual practice is for the workman to be allowed to select his attending physician. Once a selection is made, however, he may not change doctors without the permission or approval of the Board.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In Alberta, in cases of dispute, the Board, if requested by the workman in writing, must nominate not less than four recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of them to conduct the examination. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board.

Similar provision for a medical appeal is made in British Columbia where a review of a workman's case may be requested by either the workman or his employer. Under the appeal procedure, the workman is examined by a Medical Review Panel, consisting of a chairman appointed by the Lieutenant-Governor in Council and two other members, selected by the workman and employer, respectively, from a list of specialists drawn up by a Government-appointed medical committee. The decision of the panel is conclusive and binding upon the Board and is not open to court review.

In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a disputed medical question, and its findings must be accepted and acted upon by the Workmen's Compensation Board.

A system of medical review in appeal cases is also provided for in the Saskatchewan Act. In that province a workman who requests a reconsideration of his claim on medical grounds may be examined by a specialist chosen by himself from a list of three specialists provided by the Board. After receiving the specialist's report, the Board is required to review the claim and notify the workman of its decision.

In all provinces the fees for medical aid are fixed by the Board.

Employers' Schemes for Medical Aid

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Acts state that employers' schemes for medical aid may be approved, subject to such conditions as the Board may impose. In Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, the Acts stipulate that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board.

Medical Aid for Seamen

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under its provisions for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

First Aid

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of

them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

Rehabilitation

To aid in getting men back to work and in lessening any handicap resulting from their injuries, a Board may adopt any means considered expedient and pay the cost from the Accident Fund. Except in Alberta, British Columbia, Nova Scotia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$5,000 in Prince Edward Island; \$10,000 in Manitoba; \$15,000 in Newfoundland; \$50,000 in New Brunswick; \$100,000 in Quebec; and \$200,000 in Ontario. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in re-training and rehabilitation. In 1958 the Newfoundland Board was given authority to spend up to \$25,000 in a year for academic or vocational training for injured workmen.

Accidents Occurring Outside the Province

The Act in each province makes provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs outside the province if the employer has a place of business in the province and the residence and usual place of employment of the workman are in the province, and provided that employment out of the province has lasted less than six months. The British Columbia and Quebec Acts stipulate that employment outside the province must be the direct continuation of employment in the province in the service of the same employer. In Ontario, an extension of coverage beyond the six-month period may be granted by the Board at the request of the employer.

A further provision in the Ontario Act states that a workman is entitled to compensation for an accident which happens while he is outside the province "merely for some temporary purpose connected with his employment" even though his residence is outside the province, if his usual and principal place of business are in Ontario.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province followed employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits.)

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is temporarily engaged outside the province on the business of the employer, provided that his residence and usual place of employment are in the province, and the employer has an established place of business in the province.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight months. In these three provinces and in Manitoba and Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if a place of business of the employer and the residence and usual place of employment of the workman are in the province. In Manitoba, members of a fire brigade or other municipal employees are eligible for compensation under this section of the Act for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation for an accident which occurs outside the province where he is required to perform his work both in and out of the province, and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident in Ontario to compensation for an accident which happens out of Ontario on a ship registered in Canada or on one of which the owner or charterer has his chief place of business in Ontario, whether or not the workman had been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision

applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that where a workman is engaged in work part of which is to be performed in the province and part in an adjoining province or country, the work is considered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workman is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay the other Board for any payment of compensation made under such an arrangement.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

Non-resident Workmen and Dependants

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law provides that, where compensation is payable to dependants residing outside of Canada, the Board may award them such lesser sum as, in its opinion, would at the date of death maintain them in a like degree of comfort as dependants of the same class in Canada. The Act further provides that any such dependant who subsequently becomes a resident of Canada is to receive compensation, for the period of his residence in Canada, according to the scale provided for a dependant resident in Canada at the time of the workman's death.

The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada, authorizing the Board to pay such smaller sum by way of compensation as, according to the conditions and costs of living in the place of residence, would maintain the dependants in a like degree of comfort as dependants of the same class residing in Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in the Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependants of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under the law resided in one of these provinces and in

Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

Security for Payment of Compensation

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the preceding three months and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

Accident Prevention

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for

that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice must be given and the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. Safety regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. The New Brunswick Board was given authority by a 1958 amendment to the Act to make regulations, subject to the approval of the Lieutenant-Governor in Council, for the prevention of accidents and the taking of safety measures in the industries of construction, demolition and excavation.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where, in the Board's opinion, conditions of immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures are taken.

In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases, and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. An accident prevention committee must be organized in every plant in Alberta and Newfoundland employing 10 or more workmen, and in every plant in British Columbia with 20 or more employees.

In the Acts of New Brunswick, Nova Scotia, Ontario and Quebec the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations, organized under the authority of the Act for that purpose. The associations operate on funds received from the Workmen's Compensation Board but all such funds are charged against the industries in the class or classes which the association represents. In New Brunswick and Nova Scotia, one accident prevention association covers each province. In Ontario, employers in 17 of the classes of industry covered by the Act (representing practically all manufacturing except paper-making) are associated in one body, called the Industrial Accident Prevention Associations. Seven classes of industry, construction, pulp and paper, lumbering, mining, electrical work, transportation and highway construction, have separate associations. In Quebec, employers in pulp and paper, lumbering, metal mining and public utilities are organized in separate associations, and employers in other classes are associated in one body, the Industrial Accident Prevention Association.

The Newfoundland and Saskatchewan Acts, in addition to vesting wide authority for accident prevention in the Board, as noted above, provide for the setting up of accident prevention associations (associations of employers in Newfoundland, associations of employers and workmen in Saskatchewan). The Prince Edward Island Act also makes provision for the formation of associations of employers for accident prevention purposes. In Saskatchewan, accident prevention associations have been formed in a number of industries. In 1956 an industrial safety association was formed in Newfoundland to promote accident prevention in all industries under the Act.

Accident prevention associations have statutory authority to make rules for the prevention of accidents. The Newfoundland, Nova Scotia and Prince Edward Island Acts provide that, if the Board approves the rules, they become binding upon all employers in the class or classes, whether members of the association or not. In New Brunswick, Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers (in Saskatchewan, employers and workmen) affected, and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. In practice, while associations may issue rules of safe work practices, they are not given binding force and there is no means of enforcing compliance with them. Most of the associations employ a staff of inspectors whose duties are to visit the industries in the membership, to advise on how to correct hazards, and to assist the employer to set up machinery within his plant for the prevention of accidents. In addition to their plant survey and injury investigation activities, the work of associations extends to all forms of safety education and safety promotion. Where an association appoints safety inspectors, the Board may pay the whole or part of their salaries out of the Accident Fund but, as already indicated, moneys paid by the Boards for such purposes are charged to the classes represented by the association concerned.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the directions of the Board, it may collect from the employer, in British Columbia, the amount of the compensation payable, not exceeding \$1,000 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta, Ontario, Quebec and

Saskatchewan, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate, or, in Alberta and Ontario, that first aid requirements have not been complied with, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may exclude the industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

International Labour Conventions and Recommendations

1. ACCIDENTS

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on page 17.

2. AGRICULTURE

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council (page 19).

3. OCCUPATIONAL DISEASES

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro- and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see page 39.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

4. MINIMUM SCALE OF COMPENSATION

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits, and dependent parents and grandparents.

In the Canadian provinces compensation is payable on at least as high a scale except that in all provinces a limit is placed on the maximum annual earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in New Brunswick and Quebec where the normal age is 18. In New Brunswick, however, payments cease if the child does not attend school up to 18 years. Exceptions are made for invalid children in all provinces. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, compensation may be paid to the age of 18 to assist a child to continue his education. In Saskatchewan, payments for educational purposes may be made to the age of 19.

5. EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 31.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claim originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

6. JURISDICTION IN DISPUTES

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring

a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

Industrial Diseases Compensated by Provinces

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in Manitoba and Ontario any disease that is peculiar to an industrial process, trade or occupation may be compensated. In Alberta and British Columbia, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered.....	British Columbia
Anthrax; Arsenic poisoning or its sequelae; Lead poisoning or its sequelae; Mercury poisoning or its sequelae; Phosphorus poisoning or its sequelae.....	All provinces
Ammonia poisoning or its sequelae.....	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	British Columbia, New Brunswick, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino-derivatives, anilin and others ..	Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds.....	Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work.....	Saskatchewan
Brass, zinc or nickel poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema in any process using oxyacetylene or electric arc for cutting or welding	British Columbia
Bursitis (see also Cellulitis)	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
—acute, elbow.....	British Columbia, Newfoundland, New Brunswick, Nova Scotia
—prepatellar	British Columbia, New Brunswick
Cadmium poisoning.....	Ontario, Quebec, Saskatchewan
Cancer arising from the manufacture, handling or use of pitch or tar.....	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae.....	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan

Carbon dioxide poisoning or its sequelae.....	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae.....	British Columbia, Newfound- land, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis, subcutaneous, hand.....	Alberta, British Columbia, New- foundland, Nova Scotia
—, —, patella.....	British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlor- ethylene, tetrachlorethane, trichloronaphthalene and others), poisoning by or its sequelae.....	British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning.....	Saskatchewan
Chrome poisoning.....	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using	British Columbia
Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or hand- ling cold materials.....	British Columbia
Compressed air illness.....	British Columbia, Newfound- land, New Brunswick, Ontario, Quebec, Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gases, fumes, vapours, mists or smoke.....	British Columbia
Conjunctivitis and/or retinitis due to electro- and oxy- acetylene welding.....	British Columbia, Manitoba, New- foundland, New Brunswick, On- tario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of....	British Columbia
Cyanide poisoning.....	Saskatchewan
Dermatitis and occupational ulcerations and infections of the skin	Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours.....	Alberta
Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manu- facturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen ..	British Columbia

Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it.....	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan
Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding.....	British Columbia
Glanders	Alberta, New Brunswick, Saskatchewan
Heat exhaustion.....	British Columbia
Infection from handling sugar.....	New Brunswick
Infected blisters from any process involving continuous friction, rubbing or vibration.....	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper.....	British Columbia
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	Saskatchewan
Nickel and its compounds, dermatitis in any process using	British Columbia
Nitrous fumes, poisoning by, or its sequelae	British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to.....	Saskatchewan
Pneumoconioses other than silicosis.....	Ontario
Pneumoconiosis	New Brunswick
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal....	Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis- producing dust.....	British Columbia
Pneumoconiosis, coal miners', in coal mining.....	Nova Scotia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending—Saskatchewan)	British Columbia, Saskatchewan
Poisoning in any process where there is exposure to methyl chloride	British Columbia

Poisoning caused by chemicals used in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever) from employment under Part I of the Act.....	British Columbia
Pulmonary and respiratory irritation from exposure to vapours, mists or dust.....	British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry.....	Ontario
Rhinitis from contact with allergens or chemical vapours or dust.....	British Columbia
Salmonellosis from employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act.....	British Columbia
Seal finger in handling seals or seal products.....	Newfoundland
Silicosis	New Brunswick, Prince Edward Island
Silicosis in mining	Newfoundland
Silicosis in any industry under Part I of the Act.....	Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal—Quebec).....	Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous-mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust	British Columbia
Silicosis in making pottery	Quebec
Staphylococcus aureus, infection by, from employment under Part I of the Act in same places of employment as for salmonellosis (see above).....	British Columbia
Stone workers' or grinders' phthisis	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining.....	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan
Tenosynovitis, tendonitis, inflammation affecting the sheaths and tendons (wrist only—Newfoundland and Saskatchewan)	British Columbia, Newfoundland, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist.....	British Columbia

Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear.....	British Columbia
Tuberculosis from employment under Part I of the Act in same places of employment as for salmonellosis.....	British Columbia
Tuberculosis contracted by a workman employed in a hospital, sanatorium or sanitarium to which Part I of the Act applies or in a provincial laboratory.....	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist.....	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work.....	British Columbia, New Brunswick, Prince Edward Island, Saskatchewan
Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities).....	British Columbia, Saskatchewan
Wood alcohol, poisoning by.....	British Columbia, Saskatchewan
X-rays, radium or other radio-active substances, any disease due to exposure to.....	British Columbia, Ontario, Quebec, (ulceration or malignant disease), Saskatchewan

Scale of Compensation

The table shows the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or Invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$200 ⁴	\$60 plus sum of \$100	Under 16, \$20 each ¹	NEWFOUNDLAND Under 16, \$30 each ¹	Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$60 to consort, \$20 to each child or \$30 to orphan child unless total benefits exceed \$130 ³
\$200	\$50 plus sum of \$200	Under 16, \$20 each. ¹ Maximum to consort and children, \$170	PRINCE EDWARD ISLAND Under 16, \$30 each. ¹ As in Newfoundland. Maximum \$120 parent or parents, \$40. Maximum in all, \$60 ²		75% of earnings, but Board may waive the 75% restriction where circumstances require it. ³
\$250	\$60 plus sum of \$150	Under 16, \$22.50 each. ¹ Maximum to consort and children, \$172.50	NOVA SCOTIA Under 16, \$30 each. ¹ As in Newfoundland. Maximum \$150 each. Maximum in all, \$60 ²		
\$300 ⁴	\$50 plus sum of \$100	Under 18, if attending school, \$20 each ¹	NEW BRUNSWICK Under 18, if attending school, \$40 each ¹		75% of \$4,000 per year ³
\$200 ⁴	\$55 plus sum of \$200	Under 18, \$20 each ¹	QUEBEC Under 18, \$30 each ¹ As in Newfoundland. ²		75% of earnings. Minimum \$75 to consort and one child; \$95 if more ³
\$300 ⁴	\$75 plus sum of \$300	Under 16, \$25 each ¹	ONTARIO Under 16, \$35 each ¹ As in Newfoundland. Maximum \$100 ²		Average earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$200 ⁴	\$75 plus sum of \$300	Under 16, \$35 each ¹	MANITOBA Under 16, \$45 each ¹ As in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ²		75% of earnings. Minimum \$75 to consort; \$110 to consort and one child; \$145 if more ³

\$250 ⁴	\$75 plus sum of \$300	Under 16, \$35 each ¹	Under 16, \$45 each plus a sum not exceeding \$50 at the discretion of the Board ¹	SASKATCHEWAN	Average earnings. Minimum \$75 to consort; \$100 to consort and one child; \$125 to consort and two children and \$15 for each additional child. ³
\$200 ⁴	\$60 plus sum of \$150	Under 16, \$30 each ¹	Under 16, \$30 each plus an amount not exceeding \$10 to any child under 18. ¹	ALBERTA	
\$250 ⁴	\$90 plus sum of \$250	Under 16, \$35 each ¹ ; if attending school, \$35 between 16 and 18 years	Under 18, \$40 each ¹ ; (a) As in Newfoundland. Maximum \$37.50 if able to attend school between 16 and 18 years and (b) If there is widow or orphan, maximum to not attending parent or parents, \$90 ²	BRITISH COLUMBIA	

¹In Manitoba, Alberta, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, payments to children may be made up to 18 years, and in Saskatchewan up to 19 years, if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

²Compensation in these cases is continued so long as Board considers workman would have contributed to support.

³For maximum earnings that may be reckoned, see Table 2, Column 5.

⁴For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta and British Columbia may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Manitoba and Saskatchewan, compensation may include payment for a burial plot, not exceeding \$50.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT		TEMPORARY		Maximum Earnings Reckoned
Total	Partial	Total	Partial	
NEWFOUNDLAND				
75% of earnings. Minimum \$65 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability ^{1,2}	\$3,000 per annum
PRINCE EDWARD ISLAND				
75% of earnings. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1,2,3}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{1,2,3}	\$3,000 per annum
NOVA SCOTIA				
75% of earnings. Minimum \$100 per month	75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury. If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$3,600 per annum
NEW BRUNSWICK				
Average earnings but not in excess of \$4,000	Amount determined by Board based on impaired earning capacity	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 75% of diminution of earning capacity for duration of disability	\$4,000 per annum
QUEBEC				
75% of earnings. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or, where possible, compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{1,2}	\$4,000 per annum

75% of earnings. Minimum \$100 per month or earnings, if less	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after acci- dent ^{1,2}	ONTARIO	75% of difference in earnings before and after accident for duration of disability. ^{1,2}	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or, where deemed just, compensation may be based on impaired earning capacity estimated from the nature of the injury ¹	MANITOBA	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ¹	\$4,500 per annum
75% of earnings. ⁴ Minimum \$30 per wk.	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after acci- dent ^{1,2}	SASKATCHEWAN	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury or, if more equi- table, 75% of difference in earnings before and after accident for duration of dis- ability ^{1,2}	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less.	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury ¹	ALBERTA	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury for duration of disability	\$4,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after acci- dent ^{1,2}	BRITISH COLUMBIA	Proportion of 75% of earnings based on im- paired earning capacity estimated from nature and degree of injury or, if more equi- table, 75% of difference in earnings before and after accident for duration of disability, ²	\$5,000 per annum

¹ If earning capacity is diminished 10% or less (5% or less in Alberta), a lump sum may be given.

² The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

³ The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.

⁴ Where compensation to workman with dependants would be less than \$1,200 a year, the Board may increase compensation in respect of dependants by specified monthly amounts. In such cases, total amount payable may not exceed \$1,200 a year.

Government
Publications



CANADA, *Labour, Department of.*
Legislation Branch

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ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

Price 25 cents Cat. No. L2-660

CONTENTS

	Page
Introduction	1
Changes in Workmen's Compensation Laws in 1960	3
Individual Liability	7
Federal Government Employees	10
Blind Workmen	11
Workmen's Compensation Boards	11
Cost of Administration	12
Scope of Laws	13
Farm Labourers and Domestic Servants	15
Casual Workers and Outworkers	15
Seamen	16
Risks Covered	17
Industrial Diseases	18
Waiting Period	20
Medical Aid	21
Employers' Schemes for Medical Aid	23
Medical Aid for Seamen	24
First Aid	24
Rehabilitation	24
Accidents Occurring Outside the Province	25
Non-resident Workmen and Dependants	27
Security for Payment of Compensation	28
Accident Prevention	29
International Labour Conventions and Recommendations	32
Industrial Diseases Compensated by Provinces	36
Scale of Compensation	41

Workmen's Compensation in Canada

A COMPARISON OF PROVINCIAL LAWS IN OCTOBER, 1960

Introduction

Each of the Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p. 20); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively. The industries covered by the Act are divided into groups and the employers in each group are collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in all provinces on the basis of 75 per cent of average earnings, subject to the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 per cent of average earnings) in the form of a monthly pension for life or, when disablement is slight, paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation. In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers, employees and other interested parties are given an opportunity to make representations. In Saskatchewan, the Act provides for the appointment of a Committee of Review equally representative of employers and organized employees every four years, and a committee reviewed the Act in 1958. In Newfoundland, provision was made in a 1959 amendment for a review of the Act by a committee of three or more members at least once in every five years. The Alberta Act is reviewed by a special committee of the Legislature every four years. A special legislative committee was appointed for this purpose in 1960. In recent years Royal Commissions have inquired into the operation of workmen's compensation laws in Ontario, British Columbia, Manitoba and Nova Scotia. The Roach report in Ontario and the Sloar report in British Columbia were made in 1950 and 1952, respectively. The reports of the Hon. W.F.A. Turgeon in Manitoba and of Mr. Justice McKinnon in Nova Scotia were completed in 1958.

Only the main points of the legislation are covered in this analysis. The scale of benefits and the occupational diseases which are compensated are set out in tables at the end of the bulletin. A summary of the provisions of the Conventions and Recommendations of the International Labour Conference on workmen's compensation permits a comparison between I.L.O. standards and the provincial statutes.

CHANGES IN WORKMEN'S COMPENSATION LAWS IN 1960

Nine of the provincial Workmen's Compensation Acts were amended at the 1960 sessions of the Legislatures, bringing about a continued upward revision of benefits. The Alberta Act was not amended but a special legislative committee was appointed to review the Act and recommend amendments at the 1961 session. The British Columbia amendment was a minor one, merely providing for the investment of surplus moneys in the Accident Fund. The changes made in the other provincial Acts are described below.

MANITOBA

The **Manitoba** amendments made provision for a monthly payment not exceeding \$75 to a wholly dependent mother of a deceased workman. All persons in this category in receipt of benefits on March 26, 1960, when the amending Act went into force, were made eligible for the new allowance. Previously, a dependent mother was classed with dependants other than consort and children, for whom the Board is empowered to make an award of a reasonable sum proportionate to the pecuniary loss sustained, subject to specific maximum amounts.

NEWFOUNDLAND

The **Newfoundland** Workmen's Compensation Act was amended to add carcinoma or malignant disease arising from radiation to the schedule of industrial diseases for which compensation is payable. This amendment was given retroactive effect to April 1, 1951, when the Act first went into force.

Subject to the approval of the Lieutenant-Governor in Council, the Board was empowered to add any disease and associated work process to the schedule by regulations. In accordance with this amendment, "industrial disease" was re-defined to include any of the diseases mentioned in the schedule and any other disease added to the schedule by regulations.

In a further amendment, the Board was given authority to appoint a committee of medical referees, subject to the approval of the Lieutenant-Governor in Council, to investigate, in relation to any claim or claims for compensation, the nature of a disease named in the schedule and its relationship to any of the work processes listed opposite the disease in the schedule.

A committee of medical referees, which is to consist of three specialists in the disease concerned, is to have the powers of inquiry of a Commissioner appointed under the Public Enquiries Act, and may require any workman to undergo medical examination.

Where a workman is examined, the committee must certify to the Board the extent of his disability by reason of the disease in respect of which he has claimed compensation.

Where a claim is made by the dependants of a deceased workman, the committee is required to certify its opinion as to the reasonableness of the

inference that the workman died from the disease, and whether the disease is related to any of the processes opposite the name or description of the disease in the schedule.

The decision of the committee is to be final and binding on the Board and the claimant as to the medical findings in the case. Costs of the investigation are to be paid from the Accident Fund.

NEW BRUNSWICK

In **New Brunswick**, the monthly payment to a widow or invalid widower was increased from \$50 to \$60, effective from June 1, 1960. The increase was made applicable to existing pensioners. Costs of the retroactive increases were made a charge on the Consolidated Revenue Fund.

The Act passed in 1955 to provide compensation for workmen who contracted silicosis before June 1, 1948, was amended to increase the monthly payment to a disabled workman or a widow from \$50 to \$60, effective from June 1, 1960. The Act is administered by the Workmen's Compensation Board but funds are provided from the Consolidated Revenue Fund.

NOVA SCOTIA

The **Nova Scotia** Act was amended to increase disability pensions in respect of past accidents, those occurring before April 1, 1959. The Legislature provided that workmen in receipt of permanent partial disability pensions computed at a rate of 66 $\frac{2}{3}$ or 70 per cent of average earnings should, from May 1, 1960, be compensated at the rate of 75 per cent of earnings, the additional costs to be borne by the Consolidated Revenue Fund. A compensation rate of 75 per cent of earnings was adopted in 1959 but it was made applicable only in respect of accidents occurring on or after April 1, 1959. Thus all permanent partial disability pensions paid under the Act are now based on 75 per cent of earnings, regardless of when the accident occurred.

Workmen disabled by silicosis or coal miners' pneumoconiosis were also made eligible for compensation at the rate of 75 per cent of earnings, effective from May 1, 1960.

Another amendment set a new minimum compensation award for a permanently and totally disabled workman with dependent children.

The Act now provides that the minimum compensation payable to a totally disabled workman with dependent children under 16 is the amount that would be payable to a widow with the same number of dependent children. The new minimum is applicable only while the workman has at least two dependent children under 16. For a permanently and totally disabled workman who does not fall within this category, the minimum compensation award is, as before, \$100 per month. This section, as amended, applies from May 1, 1960, to all permanent total disability cases, regardless of when the accident happened. Costs to the Board of making

payments at a higher rate in respect of past accidents are to be paid from the Consolidated Revenue Fund.

Two changes were made with respect to the benefits payable in fatal cases.

The Board was authorized to pay a sum not exceeding \$100 to defray expenses of conveying a workman's body from the place of his death to his place of residence. All the Acts now provide for a transportation allowance in addition to the amount allowed for funeral expenses.

By a further amendment, the limit of five on the number of children in a family eligible for benefits was removed. This amendment, made applicable to all children receiving compensation, regardless of when the accident occurred, enables the Board to pay benefits in respect of all children in a family under the age of 16, regardless of their number.

The schedule of industrial diseases was amended to add to the diseases for which compensation is payable "any disease or disability due to exposure to x-rays, radium, or other radioactive substances."

Where the Board finds that disability or death was caused by the proximate effects of radiation overdosage, the workman or his dependants will be entitled to benefits as if the overdosage were a personal injury by accident.

If, in the opinion of the Board, disability or death was caused by the cumulative effects of radiation over an extended period, the effects of the radiation will be deemed to be an industrial disease, and the workman or his dependants will be entitled to benefits under the Act.

The amendments also provided that benefits might be paid where a workman was exposed to radiation more than 12 months previous to the date of his disablement or death. In the case of other industrial diseases listed in the schedule, the workman is required to have been engaged in the employment to which the disease is attributed within the 12 months preceding his disablement.

Where a workman has been exposed to radiation outside Nova Scotia as well as within the province, the compensation paid to him is to be in the proportion that the exposure to radiation in Nova Scotia bears to the total exposure.

Employers who use any form of radiation likely to be hazardous to employees are required to furnish a record of such exposure to the Board.

Several changes were made with respect to coverage.

Hospitals, nursing homes and veterinary hospitals were brought under the Act, and provision was made for voluntary coverage, on the application of the municipality concerned, of the members of a volunteer fire brigade.

A third change in coverage related to Part III, the special section of the Act applying to fishing and dredging which makes the employer liable for the payment of compensation and requires him to carry insurance to cover his liability. As a result of this amendment, which was recommended by the McKinnon Royal Commission, the sealing industry is now classed as part of the fishing industry and covered by Part III.

ONTARIO

By an amendment to the **Ontario** Act, increases in death benefits adopted in 1953 but not applied to those already receiving compensation were made applicable to the dependants of workmen whose deaths as the result of injury occurred before the effective date of the 1953 amendments. Thus all dependants under the Act are now being paid at the same scale of benefits, that is, \$75 a month for a widow, \$25 for a dependent child and \$35 for an orphan child.

PRINCE EDWARD ISLAND

In **Prince Edward Island**, the minimum payment for temporary total or permanent total disability was increased from \$15 to \$20 per week.

The maximum allowance for funeral expenses was increased from \$200 to \$300, and the Board was authorized to pay a sum not exceeding \$100 for transporting a workman's body from the scene of the accident to the place of burial.

As a result of a further amendment, a widow on re-marriage will now receive a payment of \$50 a month (instead of \$20 a month) for a period of 12 months.

QUEBEC

The **Quebec** Act was amended to raise the maximum annual earnings on which compensation is based from \$4,000 to \$5,000, effective from January 1, 1960.

Funeral benefits were increased from \$200 to \$400. A widow was made eligible for a lump sum payment of \$300 and a monthly pension of \$75, in place of \$200 and \$55, respectively. Compensation in respect of each child under 18 was increased from \$20 to \$25 a month, and in respect of each orphan under 18 from \$30 to \$35 a month.

Increases were also provided in the amounts specified in the Act as the minimum payable to a widow and children in case monthly benefits to dependants exceed 75 per cent of the deceased workman's earnings and are subject to reduction. These minimum amounts are now \$100 where there is a widow or invalid widower and one child; \$125 where there is a consort and two children; and \$150 where there is a consort and more than two children. The former minima were \$75 to a consort and one child and \$95 to a consort with more than one child.

The increases in dependants' allowances, which were effective from January 1, 1960, were made applicable to all persons receiving pensions by reason of past accidents.

A further amendment authorized an increase from \$100,000 to \$300,000 in the amount which the Board may spend annually on rehabilitation services.

SASKATCHEWAN

Amendments to the **Saskatchewan** Act increased the maximum annual earnings on which compensation is computed from \$5,000 to \$6,000, effective from July 1, 1960.

The monthly pension for a widow was raised from \$75 to \$100 but the increased pension was authorized only to the age of 70. After the age of 70, when a recipient becomes eligible for old age security, the pension reverts to \$75 a month.

The amendments also raised the allowance for an orphan child from \$45 to \$50 a month.

As in Quebec, increases were provided in the amounts specified in the Act as the minimum payable to a widow and children in case total monthly benefits exceed the maximum allowed and are subject to reduction.

In Saskatchewan, total monthly benefits to dependants in case of death may not exceed the workman's average monthly earnings, subject to the minimum amounts specified. These minimum amounts now vary with the age of the widow, whether under or over 70. Where the widow is under 70, they are as follows: where a widow is the sole dependant - \$100; where dependants are a widow and one child - \$135; where dependants are a widow and two children - \$170, plus \$20 for each additional child. Where the widow is over 70, the amounts are \$75, \$110 and \$145, respectively. The former minimum amounts were \$75, \$100 and \$125, plus \$15 for each additional child.

As a result of a further change, a widow is now entitled on re-marriage to a sum equal to two years' monthly payments or \$2,000, whichever is the lesser. Previously, a sum equal to two years' payments (\$1,800) was authorized.

Increases in benefits to widows and children were made applicable to all dependants in receipt of compensation on July 1, 1960, as well as those who become eligible for pensions after that date.

INDIVIDUAL LIABILITY

In addition to the general systems of collective liability, laws of the individual liability type providing for the payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing industry in Newfoundland, in employment under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however, the employer is required to pay compensation on the finding of a court to that effect whereas the adjudication under the territorial ordinances is made by the

Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund but contribute their proportion of the costs of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund, and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in dredging or fishing, including seal fishing, shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or the right to rehabilitation, but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the course of employment are compensated without recourse to the law courts, are protected in some measure

by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

As amended in 1955, both Ordinances provide that, with respect to accidents occurring on or after January 1, 1956, a widow is to receive a lump sum of \$300 and \$75 a month until re-marriage or death. For each dependent child under the age of 16 a monthly allowance of \$25 is payable, to be increased by an additional payment not exceeding \$10 a month, at the discretion of the Referee, where a child is an orphan. Where the only dependants are persons other than widow and children, compensation is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case he may not receive less than \$25 a week or his full earnings, if less than \$25. For a workman with a permanent partial disability, compensation is a proportion of 75% of his average earnings, depending on impairment of earning capacity as a result of the injury. In computing average earnings with respect to an accident occurring on or after January 1, 1956, \$4,000 a year is the maximum amount which may be taken into account.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

In 1958 amendments to both Ordinances the Referee was given authority to require payment by the employer or insurer of the expenses of occupational re-training of a permanently disabled workman, up to an amount not exceeding \$5,000.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 16.

FEDERAL GOVERNMENT EMPLOYEES

The Government Employees Compensation Act, which was first enacted in 1918, provides for the payment of compensation, medical and hospital expenses and other benefits to employees of the Government of Canada for disablement from accident or industrial disease arising out of their employment. In the case of the death of the employee from such accident or disease, his dependants are entitled to benefits under the Act. The general principle of the Act is that the compensation benefits payable to an employee of the Crown are to be the same as those provided for employees employed in private industry under the workmen's compensation law of the province in which the employee is usually employed. Thus, a federal employee employed in the province of Saskatchewan is paid compensation according to the scale of benefits payable under the Saskatchewan Act, and an employee in British Columbia according to the British Columbia scale of benefits.

The right to and the amount of compensation are determined, in accordance with the terms of the provincial law concerned, by the provincial Workmen's Compensation Boards which, by arrangement, handle the adjudication of claims under the federal Act as the agents of the federal Government. The boards pay compensation, medical, hospital and other expenses from deposit accounts maintained with them by the federal Government. The federal Government also pays a share of the total administrative costs in each province.

Federal Government employees are eligible for compensation under the Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed, and the dependants of an employee whose death is caused by such a disease, are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta. Claims of such employees are handled by the Alberta Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in the province of Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the scale of benefits provided for in the Ontario Act.

"Employee" under the Act covers persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers or employees of any board, commission or corporation established to perform a function or duty on behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be "employees" for the purposes of the Act.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be within the scope of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenals Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

The Minister of Labour has authority under the Act to promote accident prevention activities and safety programmes in the public service.

BLIND WORKMEN

In Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan, there are special statutes, and in Quebec there are special provisions in the Workmen's Compensation Act, dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen's Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other seven provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

WORKMEN'S COMPENSATION BOARDS

Each Workmen's Compensation Act is administered by a board of three members, five in Quebec, called the Workmen's Compensation Board, or in Quebec, Workmen's Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Manitoba and Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen's Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board.

Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

COST OF ADMINISTRATION

In each provincial Act except that of New Brunswick it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund. In New Brunswick, the Act provides that the salaries of Board members and other costs of administration are to be paid from the Consolidated Revenue Fund, unless the Lieutenant-Governor in Council orders payment of any portion from the Accident Fund.

The British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Quebec Acts provide that an annual grant may be made to the Board from the Consolidated Revenue Fund to assist in defraying expenses of administration. In most provinces a grant was made by the Government in the early years of operation of the Acts to assist in organizing the work and meeting initial expenses, but no financial assistance is now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

SCOPE OF LAWS

The provincial Workmen's Compensation Acts vary in scope but, in general, they all cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops, hotels and restaurants are covered in all provinces except Quebec. Hospitals are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan Acts; nursing homes are covered in British Columbia, Manitoba, Nova Scotia and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island. The operation of an office building or a building rented for manufacturing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is under the British Columbia, Newfoundland and Saskatchewan Acts. Janitors and caretakers are covered in Newfoundland, New Brunswick and Prince Edward Island. Transport by air is expressly included in British Columbia, New Brunswick, Ontario and Prince Edward Island. In Manitoba, it is covered when carried on by certain subsidiaries of the Canadian Pacific Railway Company. In New Brunswick, however, the industry is only included if at least 10 workers are employed, and in Prince Edward Island, it is only included if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

There are also variations with respect to other industries and occupations. In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the industries and occupations covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer parlours. The other Acts cover a somewhat narrower range of industries and occupations but their field of application is widened from time to time by the addition of new industries and classes of workers. The scope of the Acts is also affected through the power given in all provinces but Alberta and British Columbia to exclude small establishments. Some undertakings have been excluded unless more than a specified number of employees are employed.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia and Quebec. In other provinces, e.g., Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to casual workers and workers employed in the industry of farming or ranching, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Boards, except in British Columbia, have power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia. In Manitoba and Ontario, no industries are excluded by number limit. On the other hand, the Nova Scotia Board has excluded all industries employing fewer than five persons, and the Newfoundland, New Brunswick and Prince Edward Island Boards those employing fewer than three persons. In addition to these general exclusions, regulations in Newfoundland, New Brunswick, Prince Edward Island, Quebec and Saskatchewan exclude specific industries from coverage unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded notifies the Board that he wishes to be included, the undertaking must be admitted. In Quebec, only by notification by the employer is the Board required to include the undertaking in the collective liability scheme. In Saskatchewan, application by employer or workman in these cases must be approved by the Board.

FARM LABOURERS AND DOMESTIC SERVANTS

Certain classes of workers, although they are expressly excluded by some of the Acts, may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application. In New Brunswick, by a 1955 amendment, to be proclaimed in force, provision was made for persons employed as farm workmen to be brought under Part I on the application of the employer.

The provisions in the Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries; domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers may be brought within it. Domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of the provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

CASUAL WORKERS AND OUTWORKERS

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home,

are outside the scope of the collective liability system in all provinces. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, these two classes may be brought within the scope of the Act under the conditions outlined on page 14. In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

SEAMEN

The Merchant Seamen Compensation Act, 1946, provides for compensation to a disabled seaman or to dependants of a deceased seaman in case of an accident arising out of and in the course of employment. It applies to seamen, excluding pilots, apprenticed pilots and fishermen, employed on a ship of Canadian registry or on a ship chartered by demise to a person resident in Canada or having his principal place of business in Canada when such ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and must cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board (composed of three officers of the public service), which administers the Act. Compensation, in accordance with the scale set out in the Act, is paid directly by the employer.

Compensation is not payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act, nor is compensation payable where an accident does not disable a seaman for a period of at least four days. Medical aid is provided, however, for short periods of injury.

Benefits under the Act were substantially increased in 1957. The rate of compensation for disability was raised from $66\frac{2}{3}$ to 75 per cent of average earnings, and the maximum yearly earnings to be taken into account for purposes of compensation were increased from \$3,600 to \$4,500. As a result of these two amendments, a seaman who is totally disabled may receive compensation at the rate of \$3,375 a year, assuming that his earnings are \$4,500 or more.

In a fatal case, a widow now receives, under the Act as amended, an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until re-marriage. A monthly allowance of \$25 is paid for each dependent child under 18 years or \$35 for each orphan child. A maximum of \$200 is allowed for burial expenses, if they are not borne by the employer in accordance with the Canada Shipping Act, and up to \$125 for transportation and other expenses incurred in transferring the body to the place of interment.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec Workmen's Compensation Acts, but in some provinces they have been excluded by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the Act come from the four Atlantic provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, medical aid is not payable under the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman, when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (page 24).

RISKS COVERED

When in an employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury

is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Manitoba, Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia Act has a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious and wilful misconduct and did not result in the workman's death.

The word "accident" is defined in most of the provincial statutes to include "a wilful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". The Alberta and British Columbia Acts refer to a "chance" rather than "fortuitous" event and add to the above definition the words "as well as disablement arising out of and in the course of the employment, and where the disablement is caused by disease the date of the accident shall be deemed to be the date of the disablement".

"Accident" in the Manitoba Act means a chance event occasioned by a physical or natural cause, but also includes (1) a wilful and intentional act that is not the act of the workman; and (2) any event arising out of, and in the course of, employment or thing that is done and the doing of which arises out of, and in the course of, employment; and (3) conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease; and as a result of which a workman is disabled. The Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed to be the date of the accident.

In the New Brunswick Act "accident" is defined as an unlooked for mishap or untoward event which is not expected or designed and includes an accident caused by lightning, frost bite or infection from blistered hands.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is also payable for injury by lightning, and the same three Acts and the Act of Saskatchewan expressly include frostbite resulting from a workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be, it is to be presumed that his death was the result of an accident arising out of his employment, unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine (in Nova Scotia, of a coal mine). The Nova Scotia provision was amended in 1959, deleting the words "at a place where the workman had a right in the course of his employment to be".

INDUSTRIAL DISEASES

The Acts of all provinces give a workman the right to compensation for industrial diseases, subject to certain conditions. The Acts vary in these conditions and in the interpretation which is placed upon the term "industrial disease".

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, when a workman is disabled or his death is caused by an industrial disease, he or his dependants are eligible for compensation as if the disease were a personal injury by accident, if the disease is due to the nature of the employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments.

In Ontario and Saskatchewan, compensation is payable if the disease is due to the nature of the employment in which the workman was engaged, whether under one or more employments, but there is no requirement that the workman must have been engaged in the employment within the twelve months preceding his disablement.

In Alberta, where a workman is disabled from a disease listed in the schedule, and at some time during the twelve months previous to the disablement was employed in a process set opposite the disease in the schedule, he is presumed to have contracted it from the nature of the employment, unless the contrary is proved.

No special conditions are laid down in the Manitoba Act for the payment of compensation for industrial diseases, since the definition of "accident", as amended in 1959, covers conditions giving rise to an industrial disease.

In all provinces but Alberta and Manitoba, compensation may not be paid if, at the time of entering into the employment, the workman wilfully and falsely represented himself as not having previously suffered from the disease. In British Columbia, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

Under the Acts, as first enacted, the diseases for which compensation was payable were set out in a schedule, or, in New Brunswick, in regulations of the Board. The Boards were given authority to add to the schedule and in most provinces other diseases have been added to the original list. In New Brunswick, the Board was originally empowered to determine by regulation all the diseases to be compensated.

Under the system of schedule coverage, if a workman is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved. The statutory presumption that a disease is due to the nature of the scheduled employment is limited to the diseases and employments named in the schedule. Where a workman claims compensation for a disease which is not listed in a schedule, the burden of proving that it was caused by the nature of his employment rests with him.

In all the Acts except the Act of Manitoba the schedule of diseases is retained but wider coverage of industrial diseases is provided in a number of provinces either by reason of a broadened definition of "accident", as in Alberta, British Columbia and Manitoba, or through the power given to the Board to award compensation in a particular case for any disease shown to be peculiar to or characteristic of an industrial process, trade or occupation.

In Alberta and British Columbia, "accident" is defined to include disablement arising out of and in the course of the employment, and the definitions provide further that, where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement.

The definition of "accident" in the Manitoba Act includes conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease, and as a result of which a workman is disabled. That Act also provides that, where disablement is caused by an industrial disease, the

date of the beginning of the disablement is to be deemed the date of the accident.

The British Columbia and Ontario Boards, besides being empowered to award compensation for any disease enumerated in the schedule, may recognize any disease as being a disease peculiar to or characteristic of a particular industrial process, trade or occupation.

In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories and sanatoria.

In 1960 the Newfoundland Board was given authority, subject to the approval of the Lieutenant-Governor in Council, to appoint a committee of medical referees consisting of three specialists to investigate, in relation to any claim for compensation, the nature of a disease named in the schedule and its relationship to any of the work processes listed opposite the disease in the schedule. The decision of such a committee is final and binding on the Board and the claimant as to the medical findings in the case.

The industrial diseases which are compensable under the provincial Acts are shown in a table beginning at page 36.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an industrial disease, and, if he refuses or fails to do so, his employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. The Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Acts contain special provisions setting out the conditions (such as residence qualifications, period of exposure to silica dust) upon which compensation may be granted. In Alberta, British Columbia, Newfoundland, Ontario, Quebec and Saskatchewan, silicosis is compensable when it occurs in a specific industry or industries; in the remaining provinces compensation is payable for silicosis occurring in any employment within the scope of the Act which involves the inhalation of silica dust.

WAITING PERIOD

Each Act provides for a "waiting period", the statutory minimum number of days during which a workman must be disabled from earning full wages in order to qualify for compensation. The waiting period under the Acts ranges from one to five days.

In Alberta, Manitoba and Saskatchewan, the waiting period is one day. No compensation is payable for the day on which an accident occurs, but if the worker is disabled for any longer time compensation is payable from and including the day after the accident.

The waiting period is three days in British Columbia; four days in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island; and five days in Ontario and Quebec. Where a disability does not extend beyond the waiting period, the workman is not eligible for compensation. Where a disability continues beyond the waiting period, compensation is payable from the commencement of the disability.

The waiting period does not restrict the right of the workman to medical aid, which, under all the Acts, is given from the date of the accident.

MEDICAL AID

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they must be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiropody Act, and in Alberta and Saskatchewan, the term includes treatment by any person licensed under provincial law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners", defined as persons registered under the Chiropody Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In the other nine provinces, the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. Workmen are entitled to have such apparatus kept in repair or replaced as the Board deems necessary or, in Alberta, British Columbia and Manitoba, as long as disability continues. The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan provide not only for repair and renewal of artificial members or appliances in case of ordinary wear and tear but also for replacement and repair of members and appliances which are

broken in an accident arising out of and in the course of employment, and the Ontario Act provides further that, where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident.

The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicines and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, the Board may replace and repair eye-glasses broken by an accident arising out of employment. With regard to broken dentures and eye-glasses, the British Columbia Board has authority to assume the expense of replacement and repair only "if such breakage is accompanied by objective signs of personal injury", and the Saskatchewan Board will do so "when breakage is occasioned by an accident in which the workman is injured sufficiently to require medical attention for which the board accepts responsibility". The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta and Ontario, provision is made in permanent total disability cases for such other treatment, services or attendance as may be necessary as a result of the injury.

The Board is authorized to make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the allowance authorized to be paid is \$6 a day. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, in Alberta, British Columbia, Manitoba and Quebec, the Board is authorized to permit the workman to be treated by the physician of his own choice (in the British Columbia and Manitoba Acts, "the physician who may be selected or employed by the injured workman or his employer"). While the other Acts make no mention of choice of doctor, the usual practice is for the workman to be allowed to select his attending physician. Once a selection is made, however, he may not change doctors without the permission or approval of the Board.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In Alberta, in cases of dispute, the Board, if requested by the workman in writing, must nominate not less than four recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of them to conduct the examination. If either or both fail to make a choice, the Board may

make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board.

Similar provision for a medical appeal is made in British Columbia where a review of a workman's case may be requested by either the workman or his employer. Under the appeal procedure, the workman is examined by a Medical Review Panel, consisting of a chairman appointed by the Lieutenant-Governor in Council and two other members, selected by the workman and employer, respectively, from a list of specialists drawn up by a Government-appointed medical committee. The decision of the panel is conclusive and binding upon the Board and is not open to court review.

In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a disputed medical question, and its findings must be accepted and acted upon by the Workmen's Compensation Board.

A system of medical review in appeal cases is also provided for in the Saskatchewan Act. In that province a workman who requests a reconsideration of his claim on medical grounds may be examined by a specialist chosen by himself from a list of three specialists provided by the Board. After receiving the specialist's report, the Board is required to review the claim and notify the workman of its decision.

In Manitoba, an injured workman who feels aggrieved at a medical decision concerning his case has a right of appeal to a Medical Board of Reference, consisting of a chairman and deputy chairman appointed by the Manitoba Medical Association, one doctor named by the injured workman, one named by the employer, and one by the Workmen's Compensation Board from a panel of specialists furnished by the Medical Association. After reviewing the case and examining the workman, the Medical Board of Reference is required to report its findings to the Board.

In all provinces the fees for medical aid are fixed by the Board.

EMPLOYERS' SCHEMES FOR MEDICAL AID

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Acts state that employers' schemes for medical aid

may be approved, subject to such conditions as the Board may impose. In Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, the Acts stipulate that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board.

MEDICAL AID FOR SEAMEN

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under its provisions for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

FIRST AID

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

REHABILITATION

To aid in getting workmen back to work and in lessening any handicap resulting from their injuries, a Board may adopt any means considered expedient and pay the cost from the Accident Fund. Except in Alberta, British Columbia, Nova Scotia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$5,000 in Prince Edward Island; \$10,000 in Manitoba; \$15,000 in Newfoundland; \$50,000 in New Brunswick;

\$200,000 in Ontario; and \$300,000 in Quebec. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in re-training and rehabilitation. In 1958 the Newfoundland Board was given authority to spend up to \$25,000 in a year for academic or vocational training for injured workmen.

ACCIDENTS OCCURRING OUTSIDE THE PROVINCE

The Act in each province makes provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs outside the province if the employer has a place of business in the province and the residence and usual place of employment of the workman are in the province, and provided that employment out of the province has lasted less than six months. The British Columbia and Quebec Acts stipulate that employment outside the province must be the direct continuation of employment in the province in the service of the same employer. In Ontario, an extension of coverage beyond the six-month period may be granted by the Board at the request of the employer.

A further provision in the Ontario Act states that a workman is entitled to compensation for an accident which happens while he is outside the province "merely for some temporary purpose connected with his employment" even though his residence is outside the province, if his usual and principal place of business is in Ontario.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province followed employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits.)

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is temporarily engaged outside the province on the business of the employer, provided that his residence and usual place of employment are in the province, and the employer has an established place of business in the province.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight

months. In these three provinces and in Manitoba and Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if a place of business of the employer and the residence and usual place of employment of the workman are in the province. In Manitoba, members of a fire brigade or other municipal employees are eligible for compensation under this section of the Act for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation for an accident which occurs outside the province where he is required to perform his work both in and out of the province, and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident in Ontario to compensation for an accident which happens out of Ontario on a ship or vessel if the ship is registered in Canada or the owner or charterer has his chief place of business in Ontario, whether or not the workman had been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that where a workman is engaged in work part of which is to be performed in the province and part in an adjoining province or country, the work is considered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workman is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay the other Board for any payment of compensation made under such an arrangement.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

NON-RESIDENT WORKMEN AND DEPENDANTS

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law provides that, where compensation is payable to dependants residing outside of Canada, the Board may award them such lesser sum as, in its opinion, would at the date of death maintain them in a like degree of comfort as dependants of the same class in Canada. The Act further provides that any such dependant who subsequently becomes a resident of Canada is to receive compensation, for the period of his residence in Canada, according to the scale provided for a dependant resident in Canada at the time of the workman's death.

The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada, authorizing the Board to pay such smaller sum by way of compensation as, according to the conditions and costs of living in the place of residence, would maintain the dependants in a like degree of comfort as dependants of the same class residing in Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in the Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependants of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under the law resided in one of these provinces and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

SECURITY FOR PAYMENT OF COMPENSATION

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation

for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province, where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the three months preceding the bankruptcy and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

ACCIDENT PREVENTION

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice must be given, and the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. Safety

regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. The New Brunswick Board was given authority by a 1958 amendment to the Act to make regulations, subject to the approval of the Lieutenant-Governor in Council, for the prevention of accidents and the taking of safety measures in the industries of construction, demolition and excavation.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where, in the Board's opinion, conditions of immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures are taken.

In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases, and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. An accident prevention committee must be organized in every plant in Alberta and Newfoundland employing 10 or more workmen, and in every plant in British Columbia with 20 or more employees.

In the Acts of New Brunswick, Nova Scotia, Ontario and Quebec the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations, organized under the authority of the Act for that purpose. The associations operate on funds received from the Workmen's Compensation Board but all such funds are charged against the industries in the class or classes which the association represents. In New Brunswick and Nova Scotia, one accident prevention association covers each province. In Ontario, employers in 17 of the classes of industry covered by the Act (representing practically all manufacturing except paper-making) are associated in one body, called the Industrial Accident Prevention Associations. Seven classes of industry, construction, pulp and paper, lumbering, mining, electrical work, transportation and highway construction, have separate associations. In Quebec, employers in pulp and paper, lumbering, metal mining and public utilities are organized in separate associations, and employers in other classes are associated in one body, the Industrial Accident Prevention Association.

The Newfoundland and Saskatchewan Acts, in addition to vesting wide authority for accident prevention in the Board, as noted above, provide for the setting up of accident prevention associations (associations of employers in Newfoundland, associations of employers and workmen in Saskatchewan). The Prince Edward Island Act also makes provision for the formation of associations of employers for accident prevention purposes. In Saskatchewan, accident

prevention associations have been formed in a number of industries. In 1956 an industrial safety association was formed in Newfoundland to promote accident prevention in all industries under the Act.

Accident prevention associations have statutory authority to make rules for the prevention of accidents. The Newfoundland, Nova Scotia and Prince Edward Island Acts provide that, if the Board approves the rules, they become binding upon all employers in the class or classes, whether members of the association or not. In New Brunswick, Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers (in Saskatchewan, employers and workmen) affected, and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. In practice, while associations may issue rules of safe work practices, they are not given binding force and there is no means of enforcing compliance with them. Most of the associations employ a staff of inspectors whose duties are to visit the industries in the membership, to advise on how to correct hazards, and to assist the employer to set up machinery within his plant for the prevention of accidents. In addition to their plant survey and injury investigation activities, the work of associations extends to all forms of safety education and safety promotion. Where an association appoints safety inspectors, the Board may pay the whole or part of their salaries out of the Accident Fund but, as already indicated, moneys paid by the Boards for such purposes are charged to the classes represented by the association concerned.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the directions of the Board, it may collect from the employer, in British Columbia, the amount of the compensation payable, not exceeding \$1,000 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta, Ontario, Quebec and Saskatchewan, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate, or, in Alberta and Ontario, that first aid requirements have not been complied with, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may

exclude the industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS

1. ACCIDENTS

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on page 13.

2. AGRICULTURE

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council (page 15).

3. OCCUPATIONAL DISEASES

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see page 36.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

4. MINIMUM SCALE OF COMPENSATION

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits and dependent parents and grandparents.

In the Canadian provinces compensation is payable on the basis of seventy five per cent of earnings but in all provinces a limit is placed on the maximum annual earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in New Brunswick and Quebec where the normal age is 18. In New Brunswick, however, payments cease if the child does not attend school up to 18 years. Exceptions are made for invalid children in all provinces. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, compensation may be paid to the age of 18 to assist a child to continue his education. In Saskatchewan, payments for educational purposes may be made to the age of 19.

5. EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 27.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claim originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

6. JURISDICTION IN DISPUTES

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

INDUSTRIAL DISEASES COMPENSATED BY PROVINCES

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in Manitoba and Ontario any disease that is peculiar to an industrial process, trade or occupation may be compensated. In Alberta and British Columbia, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered	British Columbia
Anthrax; Arsenic poisoning or its sequelae; Lead poisoning or its sequelae; Mercury poisoning or its sequelae; Phosphorus poisoning or its sequelae	All provinces
Ammonia poisoning or its sequelae	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	British Columbia, New Brunswick, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino-derivatives, anilin and others	Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds	Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work	Saskatchewan
Brass, zinc or nickel poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema in any process using oxyacetylene or electric arc for cutting or welding ...	British Columbia
Bursitis (see also Cellulitis)	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
—acute, elbow	British Columbia, Newfoundland, New Brunswick, Nova Scotia
—prepatellar	British Columbia, New Brunswick
Cadmium poisoning	Ontario, Quebec, Saskatchewan
Cancer arising from the manufacture, handling or use of pitch or tar	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan

Carbon dioxide poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae	British Columbia, Newfound- land, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis, subcutaneous, hand	Alberta, British Columbia, New- foundland, Nova Scotia
—, —, patella	British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlor- ethylene, tetrachlorethane, trichloronaphthalene and others), poisoning by or its sequelae	British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning	Saskatchewan
Chrome poisoning	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using	British Columbia
Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or han- dling cold materials	British Columbia
Compressed air illness	British Columbia, Newfound- land, New Brunswick, Ontario, Quebec, Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gases, fumes, vapours, mists or smoke	British Columbia
Conjunctivitis and/or retinitis due to electro- and oxy- acetylene welding	British Columbia, Manitoba, New- foundland, New Brunswick, On- tario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of	British Columbia
Cyanide poisoning	Saskatchewan
Dermatitis and occupational ulcerations and infections of the skin	Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours	Alberta
Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manu- facturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen .	British Columbia
Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it	Newfoundland, Nova Scotia, Ontar- io, Prince Edward Island, Quebec, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan

Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding	British Columbia
Glanders	Alberta, New Brunswick, Saskat- chewan
Heat exhaustion	British Columbia
Infection from handling sugar	New Brunswick
Infected blisters from any process involving continuous friction, rubbing or vibration	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskat- chewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper	British Columbia
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	Saskatchewan
Nickel and its compounds, dermatitis in any process using	British Columbia
Nitrous fumes, poisoning by, or its sequelae	British Columbia, Manitoba (mu- nition making), Newfoundland, Ontario, Quebec, Saskatchewan
Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to	Saskatchewan
Pneumoconioses other than silicosis	Ontario
Pneumoconiosis	New Brunswick
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis- producing dust	British Columbia
Pneumoconiosis, coal miners', in coal mining	Nova Scotia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending— Saskatchewan)	British Columbia, Saskatchewan
Poisoning in any process where there is exposure to methyl chloride	British Columbia
Poisoning caused by chemicals used in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever) from employment under Part I of the Act	British Columbia
Pulmonary and respiratory irritation from exposure to vapours, mists or dust	British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry	Ontario

Rhinitis from contact with allergens or chemical vapours or dust	British Columbia
Salmonellosis from employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act	British Columbia
Seal finger in handling seals or seal products	Newfoundland
Silicosis	New Brunswick, Prince Edward Island
Silicosis in mining	Newfoundland
Silicosis in any industry under Part I of the Act	Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal - Quebec)	Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous-mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust	British Columbia
Silicosis in making pottery	Quebec
Staphylococcus aureus, infection by, from employment under Part I of the Act in same places of employment as for salmonellosis (see above)	British Columbia
Stone workers' or grinders' phthisis	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan
Tenosynovitis, tendonitis, inflammation affecting the sheaths and tendons (wrist only-Newfoundland and Saskatchewan)	British Columbia, Newfoundland, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist ...	British Columbia
Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear	British Columbia
Tuberculosis from employment under Part I of the Act in same places of employment as for salmonellosis ..	British Columbia
Tuberculosis contracted by a workman employed in a hospital, sanatorium or sanitarium to which Part I of the Act applies or in a provincial laboratory	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work	British Columbia, New Brunswick, Prince Edward Island, Quebec, Saskatchewan

Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities)	British Columbia, Saskatchewan
Wood alcohol, poisoning by	British Columbia, Saskatchewan
X-rays, radium or other radio-active substances, any disease due to exposure to	British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan
-carcinoma or malignant disease arising from radiation .	Newfoundland, Quebec

SCALE OF COMPENSATION

The tables on the following pages show the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$200 ⁴	\$60 plus sum of \$100	Under 16, \$20 each ¹	Under 16, \$30 each ¹	NEWFOUNDLAND Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$60 to con- sort, \$20 to each child or \$30 to orphan child unless total benefits exceed \$130 ³
\$300 ⁴	\$50 plus sum of \$200	Under 16, \$20 each. ¹ Maximum to consort and children, \$170	Under 16, \$30 each. ¹ Maximum \$120	PRINCE EDWARD ISLAND As in Newfoundland. Maximum to parent or parents, \$40, Maximum in all, \$60 ²	75% of earnings, but Board may waive the 75% restriction where circumstances require it. ³
\$250 ⁴	\$60 plus sum of \$150	Under 16, \$22.50 each. ¹	Under 16, \$30 each. ¹	NOVA SCOTIA As in Newfoundland. Maximum \$45 each. Maximum in all, \$60 ²	
\$300 ⁴	\$60 plus sum of \$100	Under 18, if attend- ing school, \$20 each ¹	Under 18, if attend- ing school, \$40 each ¹	NEW BRUNSWICK As in Newfoundland. ¹	75% of \$4,000 per year ³
\$400 ⁴	\$75 plus sum of \$300	Under 18, \$25 each ¹	Under 18, \$35 each ¹	QUEBEC As in Newfoundland. ²	75% of earnings. Minimum \$100 to con- sort and one child; \$125 to consort and two children; \$150 to consort and more than two children ³
\$300 ⁴	\$75 plus sum of \$300	Under 16, \$25 each ¹	Under 16, \$35 each ¹	ONTARIO As in Newfoundland. Maximum \$100 ²	Average earnings. Minimum \$75 to con- sort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$200 ⁴	\$75 plus sum of \$300	Under 16, \$35 each ¹	Under 16, \$45 each ¹	MANITOBA Maximum to wholly dependent mother, \$75. Other dependants — as in New- foundland. Maximum \$30 each. Max- imum in all, \$60 ²	75% of earnings. Minimum \$75 to con- sort; \$110 to consort and one child; \$145 if more ³

\$250 ⁴	\$100 plus sum of \$300 ³	Under 16, \$35 each ¹	Under 16, \$50 each plus a sum not exceeding \$50 at the discretion of the Board ¹	SASKATCHEWAN As in Newfoundland. ²	Average earnings. Minimum \$100 to consort; \$135 to consort and one child; \$170 to consort and two children and \$20 for each additional child. ^{5,6}
\$200 ⁴	\$60 plus sum of \$150	Under 16, \$30 each ¹	Under 16, \$30 each plus an amount not exceeding \$10 to any child under 18. ¹	ALBERTA As in Newfoundland. Maximum to parent or parents, \$50. Maximum in all, \$85	
\$250 ⁴	\$90 plus sum of \$250	Under 16, \$35 each ¹ ; if attending school, \$35 between 16 and 18 years	Under 18, \$40 each ¹ ; \$37.50 if able to attend school between 16 and 18 years and not attending	BRITISH COLUMBIA (a) As in Newfoundland. Maximum \$90 to parent or parents. Maximum in all, \$90 (b) If there is widow or invalid widower or orphans, maximum to parent or parents, \$90 ²	

¹ In Manitoba, Alberta, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, payments to children may be made up to 18 years, and in Saskatchewan up to 19 years, if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

² Compensation in these cases is continued so long as Board considers workman would have contributed to support.

³ For maximum earnings that may be reckoned, see Table 2, Column 5.

⁴ For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta, British Columbia, Nova Scotia and Prince Edward Island may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Manitoba and Saskatchewan, compensation may include payment for a burial plot, not exceeding \$50.

⁵ Monthly pension of \$75 after the age of 70.

⁶ If consort is over 70, amounts are \$75, \$110 and \$145, respectively.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT			TEMPORARY		Maximum Earnings Reckoned
Total	Partial		Total	Partial	
75% of earnings. Minimum \$65 per month or earnings, if less	NEWFOUNDLAND		75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability ^{1,2}	\$3,000 per annum
	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}				
75% of earnings. Minimum \$20 per wk. or earnings, if less	PRINCE EDWARD ISLAND		75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury ^{1,2,3}	\$3,000 per annum
	75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1,2,3}				
75% of earnings. Minimum \$100 per month or, if the workman has more than one child under 16, the amount which a widow with the same number of children would receive	NOVA SCOTIA		75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$3,600 per annum
	75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury. If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹				
Average earnings but not in excess of 75% of \$4,000	NEW BRUNSWICK		75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 75% of diminution of earning capacity for duration of disability	\$4,000 per annum
	Amount determined by Board based on impaired earning capacity				
75% of earnings. Minimum \$15 per wk. or earnings, if less	QUEBEC		75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury ^{1,2}	\$5,000 per annum
	75% of difference in earnings before and after accident or, where possible, compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1,2}				

75% of earnings. Minimum \$100 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or, where deemed just, compensation may be based on impaired earning capacity estimated from the nature of the injury ¹	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ¹	\$4,500 per annum
75% of earnings. ⁴ Minimum \$30 per wk.	SASKATCHEWAN Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury ¹ or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$30 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$6,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	ALBERTA Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury ¹	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability	\$4,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	BRITISH COLUMBIA Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum

¹ If earning capacity is diminished 10% or less (5% or less in Alberta), a lump sum may be given.

² The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

³ The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.

⁴ Where compensation to workman with dependants would be less than \$1,200 a year, the Board may increase compensation in respect of dependants by specified monthly amounts. In such cases, total amount payable may not exceed \$1,200 a year.



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Workmen's Compensation in Canada

A Comparison of Provincial Laws

OCTOBER, 1961



DEPARTMENT OF LABOUR OF CANADA

LEGISLATION BRANCH

Hon. MICHAEL STARR
Minister

GEORGE V. HAYTHORNE
Deputy Minister



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Workmen's Compensation in Canada

A Comparison of Provincial Laws

OCTOBER, 1961

DEPARTMENT OF LABOUR OF CANADA

LEGISLATION BRANCH

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QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

Price 25 cents Cat. No. L2-6/1961

CONTENTS

	Page
Introduction	1
Changes in Workmen's Compensation Laws in 1961	2
Individual Liability	7
Federal Government Employees	10
Blind Workmen	11
Workmen's Compensation Boards	11
Cost of Administration	12
Scope of Laws	13
Farm Labourers and Domestic Servants	15
Casual Workers and Outworkers	15
Seamen	16
Risks Covered	17
Industrial Diseases	18
Waiting Period	20
Medical Aid	21
Employers' Schemes for Medical Aid	23
Medical Aid for Seamen	24
First Aid	24
Rehabilitation	24
Accidents Occurring Outside the Province	25
Non-resident Workmen and Dependants	27
Security for Payment of Compensation	28
Accident Prevention	29
International Labour Conventions and Recommendations	32
Industrial Diseases Compensated by Provinces	35
Scale of Compensation	39

FOREWORD

This bulletin, which analyzes and discusses in some detail the main points of the Canadian system of workmen's compensation, is revised annually to incorporate legislative changes made during the year. The scale of benefits and the occupational diseases for which compensation is payable are set out in tables, permitting comparisons between provinces. A summary of the provisions of the Conventions and Recommendations of the International Labour Conference on workmen's compensation is included.

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INTRODUCTION

Each of the Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p. 20); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively. The industries covered by the Act are divided into groups and the employers in each group are collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in all provinces on the basis of 75 per cent of average earnings, subject to the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 per cent of average earnings) in the form of a monthly pension for life or, when disablement is slight,

paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation. In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers, employees and other interested parties are given an opportunity to make representations. In Saskatchewan, the Act provides for the appointment of a Committee of Review equally representative of employers and organized employees every four years, and a committee reviewed the Act in 1958. In Newfoundland, provision was made in a 1959 amendment for a review of the Act by a committee of three or more members at least once in every five years. The Alberta Act is reviewed by a special committee of the Legislature every four years. A special legislative committee was appointed for this purpose in 1960. In recent years Royal Commissions have inquired into the operation of workmen's compensation laws in Ontario, British Columbia, Manitoba and Nova Scotia. The Roach report in Ontario and the Sloan report in British Columbia were made in 1950 and 1952, respectively. The reports of the Hon. W.F.A. Turgeon in Manitoba and of Mr. Justice McKinnon in Nova Scotia were completed in 1958.

CHANGES IN WORKMEN'S COMPENSATION LAWS IN 1961

Five of the provincial Workmen's Compensation Acts were amended in 1961. The amending Acts raised the ceiling on annual earnings in four provinces and provided for other increases in benefits. Increased compensation in respect of past accidents was provided for in Alberta and Nova Scotia, the Alberta Act authorizing an additional payment in case of a recurring disability and the Nova Scotia Act raising the compensation rate in temporary total, temporary partial and permanent total disability cases to 75 per cent. In Prince Edward Island, a change in the definition of "accident" gave a broader discretion to the Board to grant compensation for any disablement resulting from

employment. The Alberta amendments implemented the recommendations of the special legislative committee which reviewed the Act in 1960. The more important changes in the provincial Acts are described below.

ALBERTA

In Alberta, maximum annual earnings for compensation and assessment purposes were increased from \$4,000 to \$5,000. Another amendment increased the minimum weekly payment of compensation for temporary total or permanent total disability from \$25 to \$35 or average earnings, if less.

The allowance for funeral expenses was raised from \$200 to \$250, and provision was made (as in Manitoba and Saskatchewan) for payment of the cost of a burial plot, not exceeding \$50. The section of the Act providing for an allowance of up to \$100 for transportation of the body of the workman within the province was amended, authorizing payment of the necessary expenses, not exceeding \$100, of transporting the body for embalming and burial. Where a funeral coach is used, an allowance of 35 cents a mile or \$10 may be paid, whichever is greater.

Other amendments raised the lump sum payable to a widow from \$150 to \$200, a widow's monthly pension from \$60 to \$75, and the monthly pension to a dependent child under 16 (or a dependent invalid child) from \$30 to \$40. The maximum additional monthly allowance payable at the discretion of the Board to an orphan child under 18 was increased from \$10 to \$25.

The increases in widows' and children's compensation were made applicable to all widows, invalid widowers and dependent children receiving compensation on April 1, 1961, irrespective of the date of the accident. Provisions enacted in 1956 stating that any additional payment of compensation made to bring a widow's pension to the current level should cease when she became eligible for assistance under social legislation were deleted.

The provisions giving the Board authority to pay, in case of illness, an additional allowance of up to \$15 a month to a dependent widow in necessitous circumstances and up to \$10 a month to a dependent child were amended to permit the Board to make these payments irrespective of the date of the accident that caused the death.

The provision enacted in 1952 giving the Board discretionary power to pay compensation to a common law wife but only in respect of accidents occurring after April 10, 1952, was amended, enabling the Board to pay compensation to a common law wife irrespective of the date of the accident.

In accordance with the increase from \$60 to \$75 a month in a widow's pension, the allowance payable to a widow on remarriage (a lump sum payment equal to one year's pension) was increased from \$720 to \$900.

Under a new provision, a workman in receipt of a permanent partial disability pension who has returned to work and later becomes entitled to temporary total compensation during a period of further treatment in respect of the same injury may be granted additional compensation. If more than a year has

elapsed since the permanent partial disability award was made and the combined awards are less than \$5 a day, the workman must be paid whatever additional amount is necessary to bring his total compensation to \$5 a day.

In fixing the amount of subsistence allowance payable to a workman undergoing treatment away from home, the Act now makes a distinction between a workman who has the upkeep of a home and one who has not. Instead of a uniform per diem allowance of \$6, the Board was authorized to pay \$8 a day for the first seven days of treatment, and \$6 a day thereafter if a workman is maintaining a home with one or more dependants elsewhere, or \$4.50 a day if a workman is not maintaining a home. As before, where the Board provides the workman with meals, lodging or both, the per diem allowance may be correspondingly reduced.

The minimum period during which a workman must have been exposed to silica dust in his employment in the province in order to qualify for compensation for silicosis was reduced from three years to 450 work shifts (the equivalent of two years) preceding disablement.

A new section, similar to one added to the Manitoba Act in 1959, authorized the payment of compensation for an injury sustained by a workman in work outside the scope of his employment. The section provides that, if a workman ordinarily engaged in an industry to which the Act applies is directed by his employer to do work which is not under the Act and is injured while performing such work, the work is to be deemed to be an industry to which the Act applies, and the employer will be assessed in the same manner as if he had made voluntary application for its coverage by the Board.

Applications for personal coverage of an employer or for coverage of members of the employer's family are now required to show earnings of not less than \$2,500 and not more than \$5,000 a year. Previous amounts were \$1,800 and \$4,000, respectively.

MANITOBA

The *Manitoba* Act was amended, raising the ceiling on annual earnings from \$4,500 to \$5,000.

The provision prohibiting the payment of compensation where an injury can be shown to have been due solely to a workman's serious and wilful misconduct unless it resulted in his death or serious and permanent disability was amended to change "and" to "or", permitting compensation to be paid for a disability which is either serious or permanent.

In a further amendment, the Board was authorized to pay a clothing allowance to compensate an injured workman who has to wear a prosthetic device for the extra wear on his clothing caused by the use of such a device.

Work carried on by or under the Metropolitan Corporation of Greater Winnipeg was declared to be within the scope of the Act. This amendment was made as a consequence of the establishment in 1960 of a Metropolitan system

of government for the Greater Winnipeg area. The City of Winnipeg was previously covered, as well as all other municipalities in Manitoba.

Coverage was also extended to apprentices in an industry under Part I who suffer personal injury by accident while attending prescribed school classes.

NEWFOUNDLAND

In **Newfoundland**, the maximum annual earnings on which compensation may be paid were increased from \$3,000 to \$4,000.

Benefits to dependants in fatal cases were increased, and the increases were made applicable to existing pensioners, the costs of the increases in respect of past accidents to be collected from employers in such manner and at such times as the Board may deem equitable.

The allowance for funeral expenses was increased from \$200 to \$300, the lump sum to a widow from \$100 to \$200, and a widow's pension from \$60 to \$75 a month. The monthly allowance for each dependent child under 16 was raised from \$20 to \$25, and an increase from \$30 to \$35 was provided for an orphan.

The provision stating that the total monthly compensation to dependants must not exceed 75 per cent of the deceased workman's average earnings, subject to a specified minimum payment to the widow and children, was amended to increase the minimum from \$130 to \$150.

Coverage was extended to learners undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment, and provision was made for bringing members of a volunteer fire brigade under the Act upon the application of the municipality concerned. Learners are covered by the Acts of seven other provinces. The provisions concerning the admission of the members of a volunteer fire brigade are like those which were added to the Nova Scotia Act in 1960.

The section requiring an employer at his own expense to obtain medical aid for an injured workman or to convey him to a place where he may receive such aid was amended, adding the requirement that the employer must, if necessary, furnish immediate transportation to a hospital or other place where proper medical care can be given and see that necessary medical care is provided during the journey.

The provision stating that compensation may not be assigned, charged or attached, except with the approval of the Board, was amended to provide that no claim may be set off against it except when the debt is for board and lodging and the Board has given its consent.

The Act gives the Board general power to reconsider any matter previously dealt with, and to rescind or amend any of its orders. A new provision, similar to one contained in the Nova Scotia and Prince Edward Island Acts, was added, giving the Board express authority to reopen and review any claim or decision because an injury has proven more or less serious than it was considered to be, because new evidence has been presented, or because a

change has occurred in the condition of the workman or in the number, circumstances or condition of dependants.

NOVA SCOTIA

An amendment to the **Nova Scotia Act** increased the minimum compensation payment for permanent total disability from \$100 to \$110 a month. The new minimum, effective from May 1, 1961, was made applicable to accidents occurring before or after that date.

Other amendments made it clear that the provision adopted in 1960 setting a different minimum for a totally disabled workman with more than one dependent child under 16, i.e., the amount payable to a widow with the same number of dependent children, was applicable from May 1, 1960, regardless of when the accident occurred and that the costs of increases in respect of past accidents were to be paid from the Consolidated Revenue Fund.

Continuing a policy adopted in 1960 of increasing disability pensions in respect of past accidents, i.e., those occurring before April 1, 1959, the Legislature raised the rate of compensation payable in temporary total, temporary partial and permanent total disability cases to 75 per cent. The amendment, applicable from May 1, 1961, provided that compensation was to be recomputed at the higher rate on actual average earnings at the time of the accident not exceeding the maximum allowable rate upon which compensation was payable at the time. A compensation rate of 75 per cent of earnings was adopted in 1959 but was made applicable only in respect of accidents occurring on or after April 1, 1959. In 1960 workmen in receipt of permanent partial disability pensions computed at a rate of $66\frac{2}{3}$ or 70 per cent of average earnings because of accidents occurring before April 1, 1959, were made eligible for compensation at the rate of 75 per cent, with the additional costs being borne by the Consolidated Revenue Fund. This amendment took effect from May 1, 1960.

The Legislature also provided for the payment of a helplessness allowance in permanent total disability cases. The Board was empowered either to provide a workman who is helpless because of his disability with special treatment, services or attendance or to make him an allowance for this purpose. An allowance for attendance may not exceed \$20 a month. There is a similar provision (without limit as to amount) in the Alberta and Ontario Acts.

A new section gave the Board authority to employ qualified medical experts or consultants to assist it in determining whether or not and to what degree a workman has been disabled by silicosis or coal miners' pneumoconiosis. The appointment of a medical board to advise the Workmen's Compensation Board in claims for compensation because of injury from pulmonary dust diseases was recommended by the McKinnon Royal Commission in 1958.

Tenosynovitis (simple) resulting from vibration or excessive use of the muscles of the arm, forearm, hand, leg, ankle or foot was added to the schedule of industrial diseases in the Act.

In a further extension of coverage, homes for the aged, welfare homes, municipal homes and convalescent homes were brought under the Act. Nursing homes and hospitals were covered in 1960.

PRINCE EDWARD ISLAND

The definition of "accident" in the **Prince Edward Island Act** was widened by the addition of the words "as well as disablement arising out of and in the course of his employment." "Accident" was previously defined, as in most of the provincial statutes, to include "a wilful and intentional act not being the act of the workman and a fortuitous event occasioned by a physical or natural cause." The broader definition, which is like that in the Acts of Alberta and British Columbia, enables the Board to grant compensation for any accident or disability which can be shown to have been due to the nature of a workman's employment.

The monthly payment to a widow was increased from \$50 to \$65.

Effective from January 1, 1962, the ceiling on annual earnings was raised from \$3,000 to \$4,000.

INDIVIDUAL LIABILITY

In addition to the general systems of collective liability, laws of the individual liability type providing for the payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing industry in Newfoundland, in employment under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however, the employer is required to pay compensation on the finding of a court to that effect whereas the adjudication under the territorial ordinances is made by the Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund

but contribute their proportion of the costs of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund, and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in dredging or fishing, including seal fishing, shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or the right to rehabilitation, but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the course of employment are compensated without recourse to the law courts, are protected in some measure by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta

Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

Both Ordinances were amended in 1961 to increase the compensation payable to widows and children with respect to accidents occurring after the effective date of the amendments. Lower scales of benefits remain in effect for pensioners in receipt of pensions as a result of earlier accidents.

Under the Northwest Territories Ordinance, a widow is entitled to \$300 for burial expenses, a lump sum of \$300, and, with respect to an accident occurring on or after January 1, 1962, a monthly pension of \$90 payable until remarriage or death and \$35 a month for each dependent child under 16. Under the Yukon Ordinance, the corresponding amounts are \$250 for burial expenses, \$300 as a lump sum payment, and, with respect to accidents occurring on or after July 9, 1961, a pension of \$100 a month to a widow and \$35 a month for the first two children in a family and \$20 a month for each additional child. The allowance to a dependent child is now payable to the age of 18. Under both Ordinances, an additional payment, not exceeding \$10 a month, may be made, at the discretion of the Referee, to an orphan child under 16. Where the only dependants are persons other than widow and children, compensation is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case he may not receive less than \$25 a week or his full earnings, if less than \$25. For a workman with a permanent partial disability, compensation is a proportion of 75% of his average earnings, depending on impairment of earning capacity as a result of the injury. In computing average earnings, the maximum amount of annual earnings which may be taken into account is \$4,000 in the Yukon Territory (with respect to an accident occurring on or after January 1, 1956) and \$4,500 in the Northwest Territories (with respect to an accident occurring on or after January 1, 1962). Under both Ordinances, lower ceilings are applicable with respect to earlier accidents.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

In 1958 amendments to both Ordinances the Referee was given authority to require payment by the employer or insurer of the expenses of occupational retraining of a permanently disabled workman, up to an amount not exceeding \$5,000.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 16.

FEDERAL GOVERNMENT EMPLOYEES

The Government Employees Compensation Act, which was first enacted in 1918, provides for the payment of compensation, medical and hospital expenses and other benefits to employees of the Government of Canada for disablement from accident or industrial disease arising out of their employment. In the case of the death of the employee from such accident or disease, his dependants are entitled to benefits under the Act. The general principle of the Act is that the compensation benefits payable to an employee of the Crown are to be the same as those provided for employees employed in private industry under the workmen's compensation law of the province in which the employee is usually employed. Thus, a federal employee employed in the province of Saskatchewan is paid compensation according to the scale of benefits payable under the Saskatchewan Act, and an employee in British Columbia according to the British Columbia scale of benefits.

The right to and the amount of compensation are determined, in accordance with the terms of the provincial law concerned, by the provincial Workmen's Compensation Boards which, by arrangement, handle the adjudication of claims under the federal Act as the agents of the federal Government. The boards pay compensation, medical, hospital and other expenses from deposit accounts maintained with them by the federal Government. The federal Government also pays a share of the total administrative costs in each province.

Federal Government employees are eligible for compensation under the Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed, and the dependants of an employee whose death is caused by such a disease, are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta. Claims of such employees are handled by the Alberta Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in the province of Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the scale of benefits provided for in the Ontario Act.

"Employee" under the Act covers persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers or employees of any board, commission or corporation established to perform a function or duty on behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be "employees" for the purposes of the Act.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be within the scope of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenals Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

The Minister of Labour has authority under the Act to promote accident prevention activities and safety programmes in the public service.

BLIND WORKMEN

In Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan, there are special statutes, and in Quebec there are special provisions in the Workmen's Compensation Act, dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen's Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other seven provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

WORKMEN'S COMPENSATION BOARDS

Each Workmen's Compensation Act is administered by a board of three members, five in Quebec, called the Workmen's Compensation Board, or in Quebec, Workmen's Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Manitoba and Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen's Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board. Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and

may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

COST OF ADMINISTRATION

In each provincial Act except that of New Brunswick it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund. In New Brunswick, the Act provides that the salaries of Board members and other costs of administration are to be paid from the Consolidated Revenue Fund, unless the Lieutenant-Governor in Council orders payment of any portion from the Accident Fund.

The British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Quebec Acts provide that an annual grant may be made to the Board from the Consolidated Revenue Fund to assist in defraying expenses of administration. In most provinces a grant was made by the Government in the early years of operation of the Acts to assist in organizing the work and meeting initial expenses, but no financial assistance is now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

SCOPE OF LAWS

The provincial Workmen's Compensation Acts vary in scope but, in general, they all cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops, hotels and restaurants are covered in all provinces except Quebec. Hospitals are within the scope of the Act in all provinces except Prince Edward Island; nursing homes are covered in British Columbia, Manitoba, Nova Scotia and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island. The operation of an office building or a building rented for manufacturing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is under the British Columbia, Newfoundland and Saskatchewan Acts. Janitors and caretakers are covered in Newfoundland, New Brunswick and Prince Edward Island. Transport by air is expressly included in British Columbia, New Brunswick, Ontario and Prince Edward Island. In Manitoba, it is covered when carried on by certain subsidiaries of the Canadian Pacific Railway Company. In New Brunswick, however, the industry is only included if at least 10 workers are employed, and in Prince Edward Island, it is only included if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

There are also variations with respect to other industries and occupations. In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the industries and occupations covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer parlours. The other Acts cover a somewhat narrower range of industries and occupations but their field of application is widened from time to time by the addition of new industries and classes of workers. The scope of the Acts is also affected through the power given in all provinces but Alberta and British Columbia to exclude small establishments. Some undertakings have been excluded unless more than a specified number of employees are employed.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia and Quebec. In other provinces, e.g., Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to casual workers and workers employed in the industry of farming or ranching, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Boards, except in British Columbia, have power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia. In Manitoba and Ontario, no industries are excluded by number limit. On the other hand, the Nova Scotia Board has excluded all industries employing fewer than five persons, and the Newfoundland, New Brunswick and Prince Edward Island Boards those employing fewer than three persons. In addition to these general exclusions, regulations in Newfoundland, New Brunswick, Prince Edward Island, Quebec and Saskatchewan exclude specific industries from coverage unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded notifies the Board that he wishes to be included, the undertaking must be admitted. In Quebec, only by notification by the employer is the Board required to include the undertaking in the collective liability scheme. In Saskatchewan, application by employer or workman in these cases must be approved by the Board.

FARM LABOURERS AND DOMESTIC SERVANTS

Certain classes of workers, although they are expressly excluded by some of the Acts, may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application. In New Brunswick, by a 1955 amendment, to be proclaimed in force, provision was made for persons employed as farm workmen to be brought under Part I on the application of the employer.

The provisions in the Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries; domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers may be brought within it. Domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of the provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

CASUAL WORKERS AND OUTWORKERS

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home, are outside the scope of the collective liability system in all provinces. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward

Island and Saskatchewan, these two classes may be brought within the scope of the Act under the conditions outlined on page 14. In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

SEAMEN

The Merchant Seamen Compensation Act, 1946, provides for compensation to a disabled seaman or to dependants of a deceased seaman in case of an accident arising out of and in the course of employment. It applies to seamen, excluding pilots, apprenticed pilots and fishermen, employed on a ship of Canadian registry or on a ship chartered by demise to a person resident in Canada or having his principal place of business in Canada when such ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and must cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board (composed of three officers of the public service), which administers the Act. Compensation, in accordance with the scale set out in the Act, is paid directly by the employer.

Compensation is not payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act, nor is compensation payable where an accident does not disable a seaman for a period of at least four days. Medical aid is provided, however, for short periods of injury.

Benefits under the Act were substantially increased in 1957. The rate of compensation for disability was raised from 66 $\frac{2}{3}$ to 75 per cent of average earnings, and the maximum yearly earnings to be taken into account for purposes of compensation were increased from \$3,600 to \$4,500. As a result of these two amendments, a seaman who is totally disabled may receive compensation at the rate of \$3,375 a year, assuming that his earnings are \$4,500 or more.

In a fatal case, a widow now receives, under the Act as amended, an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until remarriage. A monthly allowance of \$25 is paid for each dependent child under 18 years or \$35 for each orphan child. A maximum of \$200 is allowed for burial expenses, if they are not borne by the employer in accordance with the Canada Shipping Act, and up to \$125 for transportation and other expenses incurred in transferring the body to the place of interment.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec Workmen's Compensation Acts, but in some provinces they have been excluded

by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the Act come from the four Atlantic provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, medical aid is not payable under the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman, when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (page 24).

RISKS COVERED

When in an employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement. This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia and Manitoba Acts have a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious and wilful misconduct and did not result in the workman's death.

The word "accident" is defined in most of the provincial statutes to include "a wilful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". The Alberta and British Columbia Acts refer to a "chance" rather than "fortuitous" event.

In several provinces the definition quoted above has been widened in recent years, making it possible for the Board to grant compensation for any disablement, including disablement resulting from an industrial disease, which can be shown to have been due to the nature of a workman's employment. The Alberta, British Columbia and Prince Edward Island Acts include in the definition the words "as well as disablement arising out of and in the course of the employment", the Alberta and British Columbia Acts adding the clause "and where the disablement is caused by disease the date of the accident shall be deemed to be the date of the disablement".

"Accident", as redefined in the Manitoba Act in 1959, means a chance event occasioned by a physical or natural cause, but also includes (1) a wilful and intentional act that is not the act of the workman; and (2) any event arising out of, and in the course of, employment or thing that is done and the doing of which arises out of, and in the course of, employment; and (3) conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease; and as a result of which a workman is disabled. The Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed to be the date of the accident.

The New Brunswick definition is different from that in any of the other Acts. "Accident" in that Act is defined as an unlooked for mishap or untoward event which is not expected or designed and includes an accident caused by lightning, frost bite or infection from blistered hands.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is also payable for injury by lightning, and the same three Acts and the Act of Saskatchewan expressly include frostbite resulting from a workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be, it is to be presumed that his death was the result of an accident arising out of his employment, unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine (in Nova Scotia, of a coal mine). The Nova Scotia provision was amended in 1959, deleting the words "at a place where the workman had a right in the course of his employment to be".

INDUSTRIAL DISEASES

The Acts of all provinces give a workman the right to compensation for industrial diseases, subject to certain conditions. The Acts vary in these conditions and in the interpretation which is placed upon the term "industrial disease".

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, when a workman is disabled or his death is caused by an industrial disease, he or his dependants are eligible for compensation as if the disease were a personal injury by accident, if the disease is due to the nature of the employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments.

In Ontario and Saskatchewan, compensation is payable if the disease is due to the nature of the employment in which the workman was engaged, whether under one or more employments, but there is no requirement that the workman must have been engaged in the employment within the twelve months preceding his disablement.

In Alberta, where a workman is disabled from a disease listed in the schedule, and at some time during the twelve months previous to the disablement was employed in a process set opposite the disease in the schedule, he is presumed to have contracted it from the nature of the employment, unless the contrary is proved.

No special conditions are laid down in the Manitoba Act for the payment of compensation for industrial diseases, since the definition of "accident", as amended in 1959, covers conditions giving rise to an industrial disease.

In all provinces but Alberta and Manitoba, compensation may not be paid if, at the time of entering into the employment, the workman wilfully and falsely represented himself as not having previously suffered from the disease. In British Columbia, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

Under the Acts, as first enacted, the diseases for which compensation was payable were set out in a schedule, or, in New Brunswick, in regulations of the Board. The Boards were given authority to add to the schedule and in most provinces other diseases have been added to the original list. In New Brunswick, the Board was originally empowered to determine by regulation all the diseases to be compensated.

Under the system of schedule coverage, if a workman is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved. The statutory presumption that a disease is due to the nature of the scheduled employment is limited to the diseases and employments named in the schedule. Where a workman claims compensation for a disease which is not listed in a schedule, the burden of proving that it was caused by the nature of his employment rests with him.

In all the Acts except the Act of Manitoba the schedule of diseases is retained but wider coverage of industrial diseases is provided in a number of provinces either by reason of a broadened definition of "accident", as in Alberta, British Columbia and Manitoba, or through the power given to the Board to award compensation in a particular case for any disease shown to be peculiar to or characteristic of an industrial process, trade or occupation.

In Alberta and British Columbia, "accident" is defined to include disablement arising out of and in the course of the employment, and the definitions provide further that, where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement.

The definition of "accident" in the Manitoba Act includes conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease, and as a result of which a workman is disabled. That Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed the date of the accident.

The British Columbia and Ontario Boards, besides being empowered to award compensation for any disease enumerated in the schedule, may recognize any disease as being a disease peculiar to or characteristic of a particular industrial process, trade or occupation.

In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories and sanatoria. In Quebec, compensation is payable for any contagious disease contracted in employment in a hospital which can be shown to have been due to the nature of the employment.

In 1960 the Newfoundland Board was given authority, subject to the approval of the Lieutenant-Governor in Council, to appoint a committee of medical referees consisting of three specialists to investigate, in relation to any claim for compensation, the nature of a disease named in the schedule and its relationship to any of the work processes listed opposite the disease in the schedule. The decision of such a committee is final and binding on the Board and the claimant as to the medical findings in the case.

The industrial diseases which are compensable under the provincial Acts are shown in a table beginning at page 35.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an industrial disease, and, if he refuses or fails to do so, his employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. The Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Acts contain special provisions setting out the conditions (such as residence qualifications, period of exposure to silica dust) upon which compensation may be granted. In Alberta, British Columbia, Newfoundland, Ontario, Quebec and Saskatchewan, silicosis is compensable when it occurs in a specific industry or industries; in the remaining provinces compensation is payable for silicosis occurring in any employment within the scope of the Act which involves the inhalation of silica dust.

WAITING PERIOD

Each Act provides for a "waiting period", the statutory minimum number of days during which a workman must be disabled from earning full wages in order to qualify for compensation. The waiting period under the Acts ranges from one to five days.

In Alberta, Manitoba and Saskatchewan, the waiting period is one day. No compensation is payable for the day on which an accident occurs, but if the worker is disabled for any longer time compensation is payable from and including the day after the accident.

The waiting period is three days in British Columbia; four days in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island; and five

days in Ontario and Quebec. Where a disability does not extend beyond the waiting period, the workman is not eligible for compensation. Where a disability continues beyond the waiting period, compensation is payable from the commencement of the disability.

The waiting period does not restrict the right of the workman to medical aid, which, under all the Acts, is given from the date of the accident.

MEDICAL AID

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they must be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiropody Act, and in Alberta and Saskatchewan, the term includes treatment by any person licensed under provincial law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners", defined as persons registered under the Chiropody Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In the other nine provinces, the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. Workmen are entitled to have such apparatus kept in repair or replaced as the Board deems necessary or, in Alberta, British Columbia and Manitoba, as long as disability continues. The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan provide not only for repair and renewal of artificial members or appliances in case of ordinary wear and tear but also for replacement and repair of members and appliances which are broken in an accident arising out of and in the course of employment, and the Ontario Act provides further that, where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident. The Manitoba Board is authorized

to pay an additional allowance to compensate an injured workman who wears a prosthetic device for the extra wear on his clothing caused by the use of such a device.

The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicines and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, the Board may replace and repair eye-glasses broken by an accident arising out of employment. With regard to broken dentures and eye-glasses, the British Columbia Board has authority to assume the expense of replacement and repair only "if such breakage is accompanied by objective signs of personal injury", and the Saskatchewan Board will do so "when breakage is occasioned by an accident in which the workman is injured sufficiently to require medical attention for which the board accepts responsibility". The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta, Nova Scotia and Ontario, provision is made in permanent total disability cases for such other treatment, services or attendance as may be necessary as a result of the injury. In Nova Scotia, an allowance for attendance may not exceed \$20 a month.

The Board may make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the Board is authorized to pay \$8 a day for the first seven days of treatment, and \$6 a day thereafter if a workman is maintaining a home with one or more dependants elsewhere, or \$4.50 a day if a workman is not maintaining a home. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, in Alberta, British Columbia, Manitoba and Quebec, the Board is authorized to permit the workman to be treated by the physician of his own choice (in the British Columbia and Manitoba Acts, "the physician who may be selected or employed by the injured workman or his employer"). While the other Acts make no mention of choice of doctor, the usual practice is for the workman to be allowed to select his attending physician. Once a selection is made, however, he may not change doctors without the permission or approval of the Board.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In Alberta, in cases of dispute, the Board, if requested by the workman in writing, must nominate not less than four recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of

them to conduct the examination. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board.

Similar provision for a medical appeal is made in British Columbia where a review of a workman's case may be requested by either the workman or his employer. Under the appeal procedure, the workman is examined by a Medical Review Panel, consisting of a chairman appointed by the Lieutenant-Governor in Council and two other members, selected by the workman and employer, respectively, from a list of specialists drawn up by a Government-appointed medical committee. The decision of the panel is conclusive and binding upon the Board and is not open to court review.

In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a disputed medical question, and its findings must be accepted and acted upon by the Workmen's Compensation Board.

A system of medical review in appeal cases is also provided for in the Saskatchewan Act. In that province a workman who requests a reconsideration of his claim on medical grounds may be examined by a specialist chosen by himself from a list of three specialists provided by the Board. After receiving the specialist's report, the Board is required to review the claim and notify the workman of its decision.

In Manitoba, an injured workman who feels aggrieved at a medical decision concerning his case has a right of appeal to a Medical Board of Reference, consisting of a chairman and deputy chairman appointed by the Manitoba Medical Association, one doctor named by the injured workman, one named by the employer, and one by the Workmen's Compensation Board from a panel of specialists furnished by the Medical Association. After reviewing the case and examining the workman, the Medical Board of Reference is required to report its findings to the Board.

In all provinces the fees for medical aid are fixed by the Board.

EMPLOYERS' SCHEMES FOR MEDICAL AID

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Acts state that employers' schemes for medical aid may be approved, subject to such conditions as the Board may

impose. In Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, the Acts stipulate that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board.

MEDICAL AID FOR SEAMEN

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under its provisions for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

FIRST AID

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

REHABILITATION

To aid in getting workmen back to work and in lessening any handicap resulting from their injuries, a Board may adopt any means considered expedient and pay the cost from the Accident Fund. Except in Alberta, British Columbia, Nova Scotia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$5,000 in Prince Edward Island; \$10,000 in Manitoba; \$15,000 in Newfoundland; \$50,000 in New Brunswick; \$200,000 in Ontario; and \$300,000 in Quebec. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in retraining and rehabilitation. In 1958 the Newfoundland Board was given

authority to spend up to \$25,000 in a year for academic or vocational training for injured workmen.

ACCIDENTS OCCURRING OUTSIDE THE PROVINCE

The Act in each province makes provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs outside the province if the employer has a place of business in the province and the residence and usual place of employment of the workman are in the province, and provided that employment out of the province has lasted less than six months. The British Columbia and Quebec Acts stipulate that employment outside the province must be the direct continuation of employment in the province in the service of the same employer. In Ontario, an extension of coverage beyond the six-month period may be granted by the Board at the request of the employer.

A further provision in the Ontario Act states that a workman is entitled to compensation for an accident which happens while he is outside the province "merely for some temporary purpose connected with his employment" even though his residence is outside the province, if his usual and principal place of business is in Ontario.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province is a continuation of employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits.)

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is temporarily engaged outside the province on the business of the employer, provided that his residence and usual place of employment are in the province, and the employer has an established place of business in the province.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight months. In these three provinces and in Manitoba and Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if a place of business of the employer and the residence and usual place of employment of the workman are in the province. In Manitoba, members of a fire brigade or other municipal employees are eligible for compensation under this section of the Act for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation for an accident which occurs outside the province where he is required to perform his work both in and out of the province, and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident in Ontario to compensation for an accident which happens out of Ontario on a ship or vessel if the ship is registered in Canada or the owner or charterer has his chief place of business in Ontario, whether or not the workman had been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that, where a workman is engaged in work part of which is to be performed in the province and part in an adjoining province or country, the work is considered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the

Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workman is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay the other Board for any payment of compensation made under such an arrangement.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

NON-RESIDENT WORKMEN AND DEPENDANTS

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law provides that, where compensation is payable to dependants residing outside of Canada, the Board may award them such lesser sum as, in its opinion, would at the date of death maintain them in a like degree of comfort as dependants of the same class in Canada. The Act further provides that any such dependant who subsequently becomes a resident of Canada is to

receive compensation, for the period of his residence in Canada, according to the scale provided for a dependant resident in Canada at the time of the workman's death.

The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada, authorizing the Board to pay such smaller sum by way of compensation as, according to the conditions and costs of living in the place of residence, would maintain the dependants in a like degree of comfort as dependants of the same class residing in Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in the Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependants of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under the law resided in one of these provinces and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

SECURITY FOR PAYMENT OF COMPENSATION

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province, where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the three months preceding the bankruptcy and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

ACCIDENT PREVENTION

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice must be given, and the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. Safety regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. The New Brunswick Board was given authority by a 1958 amendment to the Act to make regulations, subject to the approval of the Lieutenant-Governor in Council, for the prevention of accidents and the taking of safety measures in the industries of construction, demolition and excavation.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where, in the Board's opinion, conditions of immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures are taken.

In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases, and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. An accident prevention committee must be organized in every plant in Alberta and Newfoundland employing 10 or more workmen, and in every plant in British Columbia with 20 or more employees.

In the Acts of New Brunswick, Nova Scotia, Ontario and Quebec the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations, organized under the authority of the Act for that purpose. The associations operate on funds received from the Workmen's Compensation Board but all such funds are charged against the industries in the class or classes which the association represents. In New Brunswick and Nova Scotia, one accident prevention association covers each province. In Ontario, employers in 17 of the classes of industry covered by the Act (representing practically all manufacturing except paper-making) are associated in one body, called the Industrial Accident Prevention Associations. Seven classes of industry, construction, pulp and paper, lumbering, mining, electrical work, transportation and highway construction, have separate associations. In Quebec, employers in pulp and paper, lumbering, metal mining and public utilities are organized in separate associations, and employers in other classes are associated in one body, the Industrial Accident Prevention Association.

The Newfoundland and Saskatchewan Acts, in addition to vesting wide authority for accident prevention in the Board, as noted above, provide for the setting up of accident prevention associations (associations of employers in Newfoundland, associations of employers and workmen in Saskatchewan). The Prince Edward Island Act also makes provision for the formation of associations of employers for accident prevention purposes. In Saskatchewan, accident prevention associations have been formed in a number of industries. In 1956 an industrial safety association was formed in Newfoundland to promote accident prevention in all industries under the Act.

Accident prevention associations have statutory authority to make rules for the prevention of accidents. The Newfoundland, Nova Scotia and Prince Edward Island Acts provide that, if the Board approves the rules, they become binding upon all employers in the class or classes, whether members of the association or not. In New Brunswick, Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers (in

Saskatchewan, employers and workmen) affected, and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. In practice, while associations may issue rules of safe work practices, they are not given binding force and there is no means of enforcing compliance with them. Most of the associations employ a staff of inspectors whose duties are to visit the industries in the membership, to advise on how to correct hazards, and to assist the employer to set up machinery within his plant for the prevention of accidents. In addition to their plant survey and injury investigation activities, the work of associations extends to all forms of safety education and safety promotion. Where an association appoints safety inspectors, the Board may pay the whole or part of their salaries out of the Accident Fund but, as already indicated, moneys paid by the Boards for such purposes are charged to the classes represented by the association concerned.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the directions of the Board, it may collect from the employer, in British Columbia, the amount of the compensation payable, not exceeding \$1,000 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta, Ontario, Quebec and Saskatchewan, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate, or, in Alberta and Ontario, that first aid requirements have not been complied with, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may exclude the industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS¹

ACCIDENTS

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on page 13.

AGRICULTURE

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

¹ In addition to the Conventions and Recommendations noted under this heading, the International Labour Conference has dealt with employment injury benefit in Part VI of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council (page 15).

OCCUPATIONAL DISEASES

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see page 35.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

MINIMUM SCALE OF COMPENSATION

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits, and dependent parents and grandparents.

In the Canadian provinces compensation is payable on the basis of seventy-five per cent of earnings but in all provinces a limit is placed on the maximum annual earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in New Brunswick and Quebec where the normal age is 18. In New Brunswick, however, payments cease if the child does not attend school up to 18 years. Exceptions are made for invalid children in all provinces. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, compensation may be paid to the age of 18 to assist a child to continue his education. In Saskatchewan, payments for educational purposes may be made to the age of 19.

EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 27.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claim originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

JURISDICTION IN DISPUTES

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations

or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

INDUSTRIAL DISEASES COMPENSATED BY PROVINCES

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in Manitoba and Ontario any disease that is peculiar to an industrial process, trade or occupation may be compensated. In Alberta and British Columbia, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria. In Quebec, compensation is payable for any contagious disease contracted by a hospital employee which can be shown to have been due to the nature of his employment.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered.....	British Columbia
Anthrax; Arsenic poisoning or its sequelae; Lead poisoning or its sequelae; Mercury poisoning or its sequelae; Phosphorus poisoning or its sequelae	All provinces
Ammonia poisoning or its sequelae	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	British Columbia, New Brunswick, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino- derivatives, anilin and others	Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds	Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work	Saskatchewan
Brass, zinc or nickel poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema in any process using oxyacetylene or electric arc for cutting or welding ...	British Columbia
Bursitis (see also Cellulitis)	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
-acute, elbow	British Columbia, Newfoundland, New Brunswick, Nova Scotia
-prepatellar	British Columbia, New Brunswick
Cadmium poisoning	Ontario, Quebec, Saskatchewan

Cancer arising from the manufacture, handling or use of pitch or tar	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan
Carbon dioxide poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis, subcutaneous, hand	Alberta, British Columbia, Newfoundland, Nova Scotia
—, —, patella	British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlorethylene, tetrachlorethane, trichloronaphthalene and others), poisoning by or its sequelae	British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning	Saskatchewan
Chrome poisoning	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using	British Columbia
Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or handling cold materials	British Columbia
Compressed air illness	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gases, fumes, vapours, mists or smoke	British Columbia
Conjunctivitis and/or retinitis due to electro- and oxyacetylene welding	British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of	British Columbia
Cyanide poisoning	Saskatchewan
Dermatitis and occupational ulcerations and infections of the skin	Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours	Alberta
Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manufacturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process	

where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen.....	British Columbia
Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan
Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding	British Columbia
Glanders	Alberta, New Brunswick, Saskatchewan
Heat exhaustion	British Columbia
Infection from handling sugar	New Brunswick
Infected blisters from any process involving continuous friction, rubbing or vibration	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper	British Columbia
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	Saskatchewan
Nickel and its compounds, dermatitis in any process using	British Columbia
Nitrous fumes, poisoning by, or its sequelae	British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to	Saskatchewan
Pneumoconioses other than silicosis	Ontario
Pneumoconiosis	New Brunswick
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis-producing dust	British Columbia
Pneumoconiosis, coal miners', in coal mining	Nova Scotia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending—Saskatchewan)	British Columbia, Saskatchewan

Poisoning in any process where there is exposure to methyl chloride	British Columbia
Poisoning caused by chemicals used in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever) from employment under Part I of the Act	British Columbia
Pulmonary and respiratory irritation from exposure to vapours, mists or dust	British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry.....	Ontario
Rhinitis from contact with allergens or chemical vapours or dust	British Columbia
Salmonellosis from employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act	British Columbia
Seal finger in handling seals or seal products	Newfoundland
Silicosis	New Brunswick, Prince Edward Island
Silicosis in mining	Newfoundland
Silicosis in any industry under Part I of the Act	Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal - Quebec)	Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous - mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust	British Columbia
Silicosis in making pottery.....	Quebec
Staphylococcus aureus, infection by, from employment under Part I of the Act in same places of employment as for salmonellosis (see above)	British Columbia
Stone workers' or grinders' phthisis	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan
Tenosynovitis, tendonitis, inflammation affecting the sheaths and tendons (wrist only-Newfoundland and Saskatchewan)	British Columbia, Newfoundland, Nova Scotia, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist	British Columbia
Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear	British Columbia
Tuberculosis from employment under Part I of the Act in same places of employment as for salmonellosis	British Columbia

Tuberculosis contracted by a workman employed in a hospital, sanatorium or sanitarium to which Part I of the Act applies or in a provincial laboratory	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work	British Columbia, New Brunswick Prince Edward Island, Quebec, Saskatchewan
Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities)	British Columbia, Saskatchewan
Wood alcohol, poisoning by	British Columbia, Saskatchewan
X-rays, radium or other radio-active substances, any disease due to exposure to	British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan
—carcinoma or malignant disease arising from radiation.	Newfoundland, Quebec

SCALE OF COMPENSATION

The tables on the following pages show the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or Invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$300 ⁴	\$75 plus sum of \$200	Under 16, \$25 each ¹	Under 16, \$35 each ¹	NEWFOUNDLAND Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child, unless total benefits exceed \$150 ³
\$300 ⁴	\$65 plus sum of \$200	Under 16, \$20 each. ¹ Maximum to consort and children, \$170	PRINCE EDWARD ISLAND Under 16, \$30 each. ¹ Maximum \$120	As in Newfoundland. Maximum to parent or parents, \$40. Maximum in all, \$60 ²	75% of earnings, but Board may waive the 75% restriction where circumstances require it ³
\$250 ⁴	\$60 plus sum of \$150	Under 16, \$22.50 each ¹	Under 16, \$30 each ¹	NOVA SCOTIA As in Newfoundland. Maximum \$45 each. Maximum in all, \$60 ²	
\$300 ⁴	\$60 plus sum of \$100	Under 18, if attending school, \$20 each ¹	Under 18, if attending school, \$40 each ¹	NEW BRUNSWICK As in Newfoundland ²	75% of \$4,000 per year ³
\$400 ⁴	\$75 plus sum of \$300	Under 18, \$25 each ¹	Under 18, \$35 each ¹	QUEBEC As in Newfoundland ²	75% of earnings. Minimum \$100 to consort and one child; \$125 to consort and two children; \$150 to consort and more than two children ³
\$300 ⁴	\$75 plus sum of \$300	Under 16, \$25 each ¹	Under 16, \$35 each ¹	ONTARIO As in Newfoundland. Maximum \$100 ²	Average earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$200 ⁴	\$75 plus sum of \$300	Under 16, \$35 each ¹	Under 16, \$45 each ¹	MANITOBA Maximum to wholly dependent mother, \$75. Other dependants - as in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ²	75% of earnings. Minimum \$75 to consort; \$110 to consort and one child; \$145 if more ³

\$250 ⁴	\$100 plus sum of \$300 ⁵	Under 16, \$35 each ¹	Under 16, \$50 each plus a sum not exceeding \$50 at the discretion of the Board ¹	SASKATCHEWAN As in Newfoundland ²	Average earnings. Minimum \$100 to consort; \$135 to consort and one child; \$170 to consort and two children, and \$20 for each additional child ^{3,6}
\$250 ⁴	\$75 plus sum of \$200	Under 16, \$40 each ¹	Under 16, \$40 each plus an amount not exceeding \$25 to any child under 18 ¹	ALBERTA As in Newfoundland. Maximum to parent or parents, \$50. Maximum in all, \$85	
\$250 ⁴	\$90 plus sum of \$250	Under 16, \$35 each ¹ ; if attending school, \$35 between 16 and 18 years	Under 18, \$40 each ¹ ; \$37.50 if able to attend school between 16 and 18 years and not attending	BRITISH COLUMBIA (a) As in Newfoundland. Maximum \$90 to parent or parents. Maximum in all, \$90 (b) If there is widow or invalid widower or orphans, maximum to parent or parents, \$90 ⁴	

¹In Manitoba, Alberta, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, payments to children may be made up to 18 years, and in Saskatchewan up to 19 years, if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

²Compensation in these cases is continued so long as Board considers workman would have contributed to support.

³For maximum earnings that may be reckoned, see Table 2, Column 5.

⁴For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta, British Columbia, Nova Scotia and Prince Edward Island may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Alberta, Manitoba and Saskatchewan, compensation may include payment for a burial plot, not exceeding \$50.

⁵Monthly pension of \$75 after the age of 70.

⁶If consort is over 70, amounts are \$75, \$110 and \$145, respectively.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT		TEMPORARY		Maximum Earnings Reckoned
Total	Partial	Total	Partial	
75% of earnings. Minimum \$65 per month or earnings, if less	NEWFOUNDLAND Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability ^{1,2}	\$4,000 per annum
75% of earnings. Minimum \$20 per wk. or earnings, if less	PRINCE EDWARD ISLAND 75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1,2,3}	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{1,2,3}	\$4,000 per annum (effective January 1, 1962)
75% of earnings. Minimum \$110 per month or, if the workman has more than one child under 16, the amount which a widow with the same number of children would receive	NOVA SCOTIA 75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury. If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$3,600 per annum
Average earnings but not in excess of 75% of \$4,000	NEW BRUNSWICK Amount determined by Board based on impaired earning capacity	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 75% of diminution of earning capacity for duration of disability	\$4,000 per annum
75% of earnings. Minimum \$15 per wk. or earnings, if less	QUEBEC 75% of difference in earnings before and after accident or, where possible, compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{1,2}	\$5,000 per annum

75% of earnings. Minimum \$100 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	MANITOBA 75% of difference in earnings before and after accident or, where deemed just, compensation may be based on impaired earning capacity estimated from the nature of the injury ¹	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ¹	\$5,000 per annum
75% of earnings. ⁴ Minimum \$30 per wk.	SASKATCHEWAN Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$30 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$6,000 per annum
75% of earnings. Minimum \$35 per wk. or earnings, if less	ALBERTA Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury ¹	75% of earnings for duration of disability. Minimum \$35 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	BRITISH COLUMBIA Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum

¹If earning capacity is diminished 10% or less (5% or less in Alberta), a lump sum may be given.

²The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

³The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.

⁴Where compensation to workman with dependants would be less than \$1,200 a year, the Board may increase compensation in respect of dependants by specified monthly amounts. In such cases, total amount payable may not exceed \$1,200 a year.



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Legislation Branch

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A Comparison of Provincial Laws

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Published by
ROGER DUHAMEL, F.R.S.C.
Queen's Printer and Controller of Stationery
Ottawa, Canada

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Available by mail from the Queen's Printer, Ottawa,
and at the following Canadian Government bookshops:

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Price 35 cents Catalogue No. L 2-6/1962

Prices subject to change without notice

FOREWORD

This bulletin, which analyzes and discusses in some detail the main points of the Canadian system of workmen's compensation, is revised annually to incorporate legislative changes made during the year. The scale of benefits and the occupational diseases for which compensation is payable are set out in tables, permitting comparisons between provinces. A summary of the provisions of the Conventions and Recommendations of the International Labour Conference on workmen's compensation is included.

The bulletin was prepared by Miss Evelyn Woolner.

Edith Lorentsen,
Director,
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Department of Labour.

CONTENTS

	Page
Introduction	1
Changes in Workmen's Compensation Laws in 1962	2
Individual Liability	7
Federal Government Employees	10
Blind Workmen	11
Workmen's Compensation Boards	11
Cost of Administration	12
Scope of Laws	12
Farm Labourers and Domestic Servants	15
Casual Workers and Outworkers	15
Seamen	16
Risks Covered	17
Industrial Diseases	18
Waiting Period	20
Medical Aid	21
Employers' Schemes for Medical Aid	23
Medical Aid for Seamen	24
First Aid	24
Rehabilitation	24
Accidents Occurring Outside the Province	25
Non-resident Workmen and Dependants	27
Security for Payment of Compensation	28
Accident Prevention	29
International Labour Conventions and Recommendations	32
Industrial Diseases Compensated by Provinces	35
Scale of Compensation	41

INTRODUCTION

Each of the Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p. 20); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively. The industries covered by the Act are divided into groups and the employers in each group are collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in all provinces on the basis of 75 per cent of average earnings, subject to the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 per cent of average earnings) in the form of a monthly pension for life or, when disablement is slight,

paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation. In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers, employees and other interested parties are given an opportunity to make representations. In Saskatchewan, the Act provides for the appointment of a Committee of Review equally representative of employers and organized employees every four years. In Newfoundland, provision was made in a 1959 amendment for a review of the Act by a committee of three or more members at least once in every five years. The Alberta Act is reviewed by a special committee of the Legislature every four years. In recent years Royal Commissions have inquired into the operation of workmen's compensation laws in Ontario, British Columbia, Manitoba and Nova Scotia. The Roach report in Ontario and the Sloan report in British Columbia were made in 1950 and 1952, respectively. The reports of the Hon. W. F. A. Turgeon in Manitoba and of Mr. Justice McKinnon in Nova Scotia were completed in 1958. In 1962 a Royal Commission (Chief Justice A. C. Des Brisay) began an inquiry into the British Columbia Act.

CHANGES IN WORKMEN'S COMPENSATION LAWS IN 1962

Five of the provincial Workmen's Compensation Acts were amended in 1962 — those of Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan. One of the most significant amendments was the provision for increased disability pensions in respect of past accidents in New Brunswick. Another important change in New Brunswick was the raising of the age limit to which children's allowances are payable from 18 to 21 years or, as before, until a child ceases to attend school. The maximum annual earnings on which compensation is based were increased in Nova Scotia and Prince Edward Island. Increased pensions were provided for widows and children in New

Brunswick, Nova Scotia and Saskatchewan, and the new scales of benefits were made applicable to existing pensioners. In Newfoundland and Prince Edward Island, the waiting period was reduced from four days to one day.

Prince Edward Island enacted a Blind Workmen's Compensation Act providing for the payment from the Consolidated Revenue Fund of the costs of compensation in excess of \$50 to a blind workman who is injured in the course of his employment. Similar legislation is in force in eight other provinces.

NEWFOUNDLAND

The *Newfoundland* Workmen's Compensation Act and its amendments since 1952 were consolidated. The only significant change made was a reduction of the waiting period from four days to one day.

NEW BRUNSWICK

The *New Brunswick* Act was extensively revised, following a thorough review by the Workmen's Compensation Board in consultation with groups of employers and workmen concerned. The amendments take effect from January 1, 1963.

For the first time an upgrading of disability pensions in respect of past accidents was provided for. In the case of existing permanent total disability awards resulting from an accident which occurred between April 26, 1918, when the Act first went into effect, and January 1, 1959, when the percentage rate of earnings taken in computing compensation was raised from 70 to 75, the amount of compensation now payable, beginning from January 1, 1963, is either the compensation payable immediately before January 1, 1963, or \$150 a month, whichever is greater.

In the case of existing permanent partial disability awards resulting from an accident which occurred between May 11, 1940, and January 1, 1959, and diminishing the earning capacity of the workman by more than 15 per cent, compensation is to be payable on a scale established by the Board based on 75 per cent of the workman's average earnings at the time of the accident or 75 per cent of \$150 a month, whichever is greater.

The Board was authorized to review any claim arising from an earlier accident, i.e., one which occurred between April 26, 1918, and May 11, 1940, where compensation was at one time payable to an injured workman for permanent partial disability and in the Board's opinion his earning capacity is seriously impaired. In any such case the Board may award whatever monthly sum it considers just in view of the workman's continuing disability. Previous to May 11, 1940, the Act placed a limit on the aggregate amount of compensation payable in permanent partial disability cases. On that date the limit was removed.

Where a claim is reopened for weekly compensation after a lapse of two years, compensation may now be computed, at the discretion of the Board, on the workman's average earnings at the time of the reopening of the claim instead of at the date of the accident.

Other amendments provided for increases from \$60 to \$75 a month in a

widow's pension, from \$100 to \$200 in the lump sum payment to a widow, from \$20 to \$25 a month in the allowance for a dependent child, and from \$40 to \$50 a month in the allowance for an orphan child. The increases were made applicable from January 1, 1963, to all widows, invalid widowers and dependent children in receipt of compensation on that date regardless of the date of the accident which caused the death of the workman.

From January 1, 1963, benefits to a child are to be paid to the age of 21 (instead of 18) or until he ceases to attend school regularly, whichever is sooner. "School" is defined to include a university, college, and any other type of occupational, trade, technical or professional training establishment.

Definitions of "accident" and "industrial disease" were widened, giving the Board greater scope in allowing claims for compensation.

"Accident" was formerly defined as "an unlooked for mishap or untoward event which is not expected or designed." It is now defined, as in a number of other provincial Acts, to include "a wilful and intentional act, not being the act of the workman, and also includes a chance event occasioned by a physical or natural cause as well as disablement arising out of and in the course of employment, and where the disablement is caused by industrial disease, the date of the accident shall be deemed to be the date of the disablement." The inclusion of the words "as well as disablement arising out of and in the course of employment" makes it possible for the Board to grant compensation for any disablement that can be shown to have been due to the nature of a workman's employment.

"Industrial disease" was redefined to include, in addition to any disease declared to be an industrial disease by the regulations, "any other disease peculiar to or characteristic of a particular industrial process, trade or occupation." Previously, only those diseases which were set out in the regulations were compensable. The Board will now be enabled to award compensation for any disease if it is satisfied that it is occupational in character.

The section providing that compensation is not payable in any case in which an accident was, in the Board's opinion, intentionally caused by the workman or was due to his intoxication or serious and wilful misconduct unless it resulted in the workman's death was amended to permit an exception in case of either death or serious and permanent disability. The amended provision is now more in line with the comparable provision in the other provincial Acts.

A further change is that the medical aid to which an injured workman is entitled under the Act may now include the services of a registered chiropractor within his legal jurisdiction.

The Board was given discretionary power to allow a claim for compensation, notwithstanding failure to make application within the time prescribed (one year after the occurrence of the accident or six months from the time of death), if in its opinion the claim is a just one and ought to be allowed. Previously, no claim could be accepted if it was not filed within the time limits set by the Act.

Learners, municipal firemen and policemen, and members of a municipal volunteer fire brigade were brought within the coverage of the Act.

The undertakings of all municipal corporations and other bodies exercising authority with respect to the affairs of a municipality are now included, and any

permanent boards or commissions established by the provincial or federal Government, as well as the Governments themselves, may avail themselves of the protection of the Act.

The amendment which was added to the Act in 1955 but not proclaimed, providing for compulsory coverage of farm workmen if the employer made application to the Board, was deleted. Farm labourers are now excluded, as in several other provinces, subject to the provision which enables an industry or workman not within the scope of Part I of the Act to be admitted by the Board on the application of the employer.

Members of the employer's family residing with him are excluded on the same conditions but the exclusion is now limited to family members who are under 16 years of age.

The section providing for the payment of compensation to workmen who work outside the province now makes provision for work in other provinces as well as those adjoining New Brunswick, referring to "another province or country" instead of "an adjoining province or country."

The effect of this section is that, provided that an employer has notified the Board that one or more of the workmen included in his payroll may be so engaged, work done in part in New Brunswick and in part in another province or country is to be considered as done in New Brunswick, and compensation is to be payable accordingly.

Further, a new provision was inserted in the Act permitting the Board to make an agreement with the workmen's compensation authority of any province or territory of Canada with a view to avoiding the duplication of assessments to which an employer might otherwise be liable in such circumstances. The Board may repay the other authority for any payment of compensation, medical aid or rehabilitation made by it under such an agreement, and may relieve an employer from assessment or reduce the amount of an assessment.

A provision which had been in the Act since it was first enacted stating that the salaries of Board members and employees and other administrative expenses were to be paid from the revenues of the province unless the Lieutenant-Governor in Council ordered payment of any portion from the Accident Fund was replaced, and provision was made, in line with current practice, for payment of all salaries and expenses from the Accident Fund.

NOVA SCOTIA

In *Nova Scotia*, the maximum annual earnings on which compensation is based were increased from \$3,600 to \$4,200, effective from May 1, 1962.

Other amendments raised a widow's pension from \$60 to \$75 a month, the allowance for a dependent child under 16 from \$22.50 to \$25 a month, and the payment for an orphan child from \$30 to \$35 a month. The increases in dependants' allowances, effective from May 1, 1962, were made applicable to existing pensioners.

A "dependant" under the Act may now include a person who becomes a dependant by reason of the marriage of the injured workman between the date

of the accident and the date of the workman's death. Previously, such persons were excluded from the definition.

A new provision allows the Board to accept partial responsibility for a disability that is due in part to the employment and in part to other causes, or where the personal injury or accident aggravates, activates or accelerates a disease or condition existing prior to the injury. In such circumstances compensation is to be payable for such proportion of the disability as may reasonably be attributed to the personal injury sustained.

An amendment with regard to the medical review board which may be appointed to resolve a medical dispute provided that the findings of such a board (which must be accepted) are to be effective from the date on which the board was appointed.

PRINCE EDWARD ISLAND

The *Prince Edward Island Act* was amended to raise the ceiling on annual earnings from \$4,000 to \$5,000, effective from January 1, 1963.

As in Newfoundland, the waiting period was reduced from four days to one day.

A new clause was added to the Act providing that, where personal injury resulting from an accident is aggravated by some pre-existing physical condition inherent in the workman at the time of the accident, the workman is to be compensated for the full injurious result, unless the pre-existing condition was due to an injury for which the workman had received or was receiving compensation.

Another amendment authorized an increase from \$5,000 to \$10,000 in the amount the Board may spend annually on rehabilitation services.

SASKATCHEWAN

In *Saskatchewan*, a widow's pension was raised from \$100 to \$110 a month. The pension is payable to the age of 70. A widow over the age of 70 receives \$75 a month. Children's allowances were also increased—from \$35 to \$45 a month for a child under 16 in the care of a remaining parent and from \$50 to \$60 a month for an orphan. The increases in dependants' allowances, effective from May 1, 1962, were made applicable to all persons in receipt of compensation on that date, regardless of the date of the accident.

The sections of the Act setting out the compensation payable for disability were revised with respect to the manner of computing "average weekly earnings". Compensation for permanent total disability is, as before, a weekly payment equal to 75 per cent of average weekly earnings, subject to the wage ceiling provided in the Act. Compensation for permanent partial disability is a proportionate amount, depending on the impairment of earning capacity resulting from the injury.

The Act now states that "average weekly earnings" are to be $1/52$ of the wages earned in the 12-month period immediately preceding the injury or, at the discretion of the Board, if more advantageous to the workman, $1/52$ of the wages earned in any period of 12 consecutive months in the 36 months preceding the

injury. The ceiling on earnings is now set as a weekly rather than as a yearly maximum—\$115.38 6/13 a week instead of \$6,000 a year.

Where a workman was not available for employment for a full 12-month period, or where, owing to the casual nature or the terms of his employment, it is impracticable to compute his average weekly earnings as above, the Board is to have regard to the average weekly earnings of other workmen during the 12 months immediately preceding the injury in the same or similar work in the same or a similar locality and to such other circumstances as it considers relevant.

Compensation for temporary total or temporary partial disability is to be awarded on the basis of the workman's rate of remuneration at the time of the injury or his average weekly earnings for a 12-month period, whichever is greater. As in permanent disability cases, the Board may select the 12-month period for the computation of earnings which is most advantageous to the workman.

The Board was authorized to pay a clothing allowance to any workman for whom it has provided an artificial limb, to help defray the cost of special clothing or to compensate for undue wear on clothing. The allowance may not exceed \$96 a year in the case of a leg amputation and \$42 a year in the case of an arm amputation.

The provision requiring a workman to have been a resident of Saskatchewan for three years preceding disablement in order to receive compensation for an industrial disease named in the schedule, unless an exception was permitted by the Board, was deleted.

A further amendment enables a volunteer municipal fire brigade to be brought within the scope of the Act by application.

INDIVIDUAL LIABILITY

In addition to the general systems of collective liability, laws of the individual liability type providing for payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing industry in Newfoundland, in employment under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however, the employer is required to pay compensation on the finding of a court to that effect whereas the adjudication under the territorial ordinances is made by the Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective

liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund but contribute their proportion of the costs of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund, and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in dredging or fishing, including seal fishing, shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or the right to rehabilitation, but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the course of employment are compensated without recourse to the law courts, are protected in some measure by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are

referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

Both Ordinances were amended in 1961 to increase the compensation payable to widows and children with respect to accidents occurring after the effective date of the amendments. Lower scales of benefits remain in effect for pensioners in receipt of pensions as a result of earlier accidents.

Under the Northwest Territories Ordinance, a widow is entitled to \$300 for burial expenses, a lump sum of \$300, and, with respect to an accident occurring on or after January 1, 1962, a monthly pension of \$90 payable until remarriage or death and \$35 a month for each dependent child under 16. Under the Yukon Ordinance, the corresponding amounts are \$250 for burial expenses, \$300 as a lump sum payment, and, with respect to accidents occurring on or after July 9, 1961, a pension of \$100 a month to a widow and \$35 a month for the first two children in a family and \$20 a month for each additional child. The allowance to a dependent child is now payable to the age of 18. Under both Ordinances, an additional payment, not exceeding \$10 a month, may be made, at the discretion of the Referee, to an orphan child under 16. Where the only dependants are persons other than widow and children, compensation is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case he may not receive less than \$25 a week or his full earnings, if less than \$25. For a workman with a permanent partial disability, compensation is a proportion of 75 per cent of his average earnings, depending on impairment of earning capacity as a result of the injury. In computing average earnings, the maximum amount of annual earnings which may be taken into account is \$4,000 in the Yukon Territory (with respect to an accident occurring on or after January 1, 1956) and \$4,500 in the Northwest Territories (with respect to an accident occurring on or after January 1, 1962). Under both Ordinances, lower ceilings are applicable with respect to earlier accidents.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

In 1958 amendments to both Ordinances the Referee was given authority to require payment by the employer or insurer of the expenses of occupational retraining of a permanently disabled workman, up to an amount not exceeding \$5,000.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 16.

FEDERAL GOVERNMENT EMPLOYEES

The Government Employees Compensation Act, which was first enacted in 1918, provides for the payment of compensation, medical and hospital expenses and other benefits to employees of the Government of Canada for disablement from accident or industrial disease arising out of their employment. In the case of the death of the employee from such accident or disease, his dependants are entitled to benefits under the Act. The general principle of the Act is that the compensation benefits payable to an employee of the Crown are to be the same as those provided for employees employed in private industry under the workmen's compensation law of the province in which the employee is usually employed. Thus, a federal employee employed in the province of Saskatchewan is paid compensation according to the scale of benefits payable under the Saskatchewan Act, and an employee in British Columbia according to the British Columbia scale of benefits.

The right to and the amount of compensation are determined, in accordance with the terms of the provincial law concerned, by the provincial Workmen's Compensation Boards which, by arrangement, handle the adjudication of claims under the federal Act as the agents of the federal Government. The boards pay compensation, medical, hospital and other expenses from deposit accounts maintained with them by the federal Government. The federal Government also pays a share of the total administrative costs in each province.

Federal Government employees are eligible for compensation under the Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed, and the dependants of an employee whose death is caused by such a disease, are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta. Claims of such employees are handled by the Alberta Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in the province of Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the scale of benefits provided for in the Ontario Act.

"Employee" under the Act covers persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers or employees of any board, commission or corporation established to perform a function or duty on

behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be "employees" for the purposes of the Act.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be within the scope of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenal Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

The Minister of Labour has authority under the Act to promote accident prevention activities and safety programmes in the public service.

BLIND WORKMEN

In Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, there are special statutes, and in Quebec there are special provisions in the Workmen's Compensation Act, dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen's Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other eight provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

WORKMEN'S COMPENSATION BOARDS

Each Workmen's Compensation Act is administered by a board of three members, five in Quebec, called the Workmen's Compensation Board, or in Quebec, Workmen's Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen's Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according

to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board. Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

COST OF ADMINISTRATION

In each provincial Act it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund.

The British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Quebec Acts provide that an annual grant may be made to the Board from the Consolidated Revenue Fund to assist in defraying expenses of administration. In most provinces a grant was made by the Government in the early years of operation of the Acts to assist in organizing the work and meeting initial expenses, but no financial assistance is now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

SCOPE OF LAWS

The provincial Workmen's Compensation Acts vary in scope but, in general, they all cover employment, whether by way of manual labour or otherwise, in

connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops, hotels and restaurants are covered in all provinces except Quebec. Hospitals are within the scope of the Act in all provinces except Prince Edward Island; nursing homes are covered in British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island. The operation of an office building or a building rented for manufacturing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is under the British Columbia, Newfoundland and Saskatchewan Acts. Janitors and caretakers are covered in Newfoundland, New Brunswick and Prince Edward Island. Transport by air is expressly included in British Columbia, New Brunswick, Ontario and Prince Edward Island. In Manitoba, it is covered when carried on by certain subsidiaries of the Canadian Pacific Railway Company. In New Brunswick, however, the industry is only included if at least 10 workers are employed, and in Prince Edward Island, it is only included if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

There are also variations with respect to other industries and occupations. In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the industries and occupations covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer parlours. The other Acts cover a somewhat narrower range of industries and occupations but their field of application is widened from time to time by the addition of new industries and classes of workers. The scope of the Acts is also affected through the power given in all provinces but Alberta and British Columbia to exclude small establishments. Some undertakings have been excluded unless more than a specified number of employees are employed.

Learners, that is, persons not under a contract of service or apprenticeship who become subject to the hazards of an industry under the Act while

taking training or doing probationary work before entering regular employment, are eligible for compensation in nine provinces. Provision is made in eight provinces for coverage of members of a municipal volunteer fire brigade. In some provinces coverage is compulsory, in others by application.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia and Quebec. In other provinces, e.g., Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to casual workers and workers employed in the industry of farming or ranching, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Boards, except in British Columbia, have power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia. In Manitoba and Ontario, no industries are excluded by number limit. On the other hand, the Nova Scotia Board has excluded all industries employing fewer than five persons, and the Newfoundland, New Brunswick and Prince Edward Island Boards those employing fewer than three persons. In addition to these general exclusions, regulations in Newfoundland, New Brunswick, Prince Edward Island, Quebec and Saskatchewan exclude specific industries from coverage unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded

notifies the Board that he wishes to be included, the undertaking must be admitted. In Quebec, only by notification by the employer is the Board required to include the undertaking in the collective liability scheme. In Saskatchewan, application by employer or workman in these cases must be approved by the Board.

FARM LABOURERS AND DOMESTIC SERVANTS

Certain classes of workers, although they are expressly excluded by some of the Acts, may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application.

The provisions in the New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries; domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers may be brought within it. Domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of the provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

CASUAL WORKERS AND OUTWORKERS

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home,

are outside the scope of the collective liability system in all provinces. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, these two classes may be brought within the scope of the Act under the conditions outlined on page 14. In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

SEAMEN

The Merchant Seamen Compensation Act, 1946, provides for compensation to a disabled seaman or to dependants of a deceased seaman in case of an accident arising out of and in the course of employment. It applies to seamen, excluding pilots, apprenticed pilots and fishermen, employed on a ship of Canadian registry or on a ship chartered by demise to a person resident in Canada or having his principal place of business in Canada when such ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and must cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board (composed of three officers of the public service), which administers the Act. Compensation, in accordance with the scale set out in the Act, is paid directly by the employer.

Compensation is not payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act, nor is compensation payable where an accident does not disable a seaman for a period of at least four days. Medical aid is provided, however, for short periods of injury.

Benefits under the Act were substantially increased in 1957. The rate of compensation for disability was raised from 66½ to 75 per cent of average earnings, and the maximum yearly earnings to be taken into account for purposes of compensation were increased from \$3,600 to \$4,500. As a result of these two amendments, a seaman who is totally disabled may receive compensation at the rate of \$3,375 a year, assuming that his earnings are \$4,500 or more.

In a fatal case, a widow now receives, under the Act as amended, an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until remarriage. A monthly allowance of \$25 is paid for each dependent child under 18 years or \$35 for each orphan child. A maximum of \$200 is allowed for burial expenses, if they are not borne by the employer in accordance with the Canada Shipping Act, and up to \$125 for transportation and other expenses incurred in transferring the body to the place of interment.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec

Workmen's Compensation Acts, but in some provinces they have been excluded by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the Act come from the four Atlantic provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, medical aid is not payable under the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman, when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (page 24).

RISKS COVERED

When in an employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement. This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia and Manitoba Acts have a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious or wilful misconduct and did not result in the death or serious and permanent disability of the workman.

The word "accident" is defined in most of the provincial statutes to include "a wilful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". The Alberta, British Columbia and New Brunswick Acts refer to a "chance" rather than "fortuitous" event.

In several provinces the definition quoted above has been widened in recent years, making it possible for the Board to grant compensation for any disablement, including disablement resulting from an industrial disease, which can be shown to have been due to the nature of a workman's employment. The Alberta, British Columbia, New Brunswick and Prince Edward Island Acts include in the definition the words "as well as disablement arising out of and

in the course of the employment", the Alberta, British Columbia and New Brunswick Acts adding a clause stating that where the disablement is caused by disease the date of the accident is to be deemed to be the date of the disablement.

"Accident", as redefined in the Manitoba Act in 1959, means a chance event occasioned by a physical or natural cause, but also includes (1) a wilful and intentional act that is not the act of the workman; and (2) any event arising out of, and in the course of, employment or thing that is done and the doing of which arises out of, and in the course of, employment; and (3) conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease; and as a result of which a workman is disabled. The Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed to be the date of the accident.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable for injury by lightning, and the same three Acts and the Act of Saskatchewan expressly include frostbite resulting from a workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be it is to be presumed that his death was the result of an accident arising out of his employment, unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine (in Nova Scotia, of a coal mine). The Nova Scotia provision was amended in 1959, deleting the words "at a place where the workman had a right in the course of his employment to be".

INDUSTRIAL DISEASES

The Acts of all provinces give a workman the right to compensation for industrial diseases, subject to certain conditions. The Acts vary in these conditions and in the interpretation which is placed upon the term "industrial disease".

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, when a workman is disabled or his death is caused by an industrial disease, he or his dependants are eligible for compensation as if the disease were a personal injury by accident, if the disease is due to the nature of the employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments.

In Ontario and Saskatchewan, compensation is payable if the disease is due to the nature of the employment in which the workman was engaged, whether under one or more employments, but there is no requirement that the workman must have been engaged in the employment within the twelve months preceding his disablement.

In Alberta, where a workman is disabled from a disease listed in the

schedule, and at some time during the twelve months previous to the disablement was employed in a process set opposite the disease in the schedule, he is presumed to have contracted it from the nature of the employment, unless the contrary is proved.

No special conditions are laid down in the Manitoba Act for the payment of compensation for industrial diseases, since the definition of "accident", as amended in 1959, covers conditions giving rise to an industrial disease.

In all provinces but Alberta and Manitoba, compensation may not be paid if, at the time of entering into the employment, the workman wilfully and falsely represented himself as not having previously suffered from the disease. In British Columbia, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

Under the Acts, as first enacted, the diseases for which compensation was payable were set out in a schedule, or, in New Brunswick, in regulations of the Board. The Boards were given authority to add to the schedule and in most provinces other diseases have been added to the original list. In New Brunswick, the Board was originally empowered to determine by regulation all the diseases to be compensated.

Under the system of schedule coverage, if a workman is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved. The statutory presumption that a disease is due to the nature of the scheduled employment is limited to the diseases and employments named in the schedule. Where a workman claims compensation for a disease which is not listed in a schedule, the burden of proving that it was caused by the nature of his employment rests with him.

In all the Acts except the Act of Manitoba the schedule of diseases is retained but wider coverage of industrial diseases is provided in a number of provinces either by reason of a broadened definition of "accident", as in Alberta, British Columbia, Manitoba and New Brunswick, or through the power given to the Board to award compensation in a particular case for any disease shown to be peculiar to or characteristic of an industrial process, trade or occupation.

In Alberta, British Columbia and New Brunswick, "accident" is defined to include disablement arising out of and in the course of the employment, and the definitions provide further that, where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement.

The definition of "accident" in the Manitoba Act includes conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease, and as a result of which a workman is disabled. That Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed the date of the accident.

The British Columbia, New Brunswick, Ontario and Quebec Boards, besides being empowered to award compensation for any disease enumerated in the schedule or regulations, may regard any disease which is peculiar to or characteristic of a particular industrial process, trade or occupation as an industrial disease for purposes of the Act.

In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories and sanatoria. In Quebec, compensation is payable for any contagious disease contracted in employment in a hospital which can be shown to have been due to the nature of the employment.

In 1960 the Newfoundland Board was given authority, subject to the approval of the Lieutenant-Governor in Council, to appoint a committee of medical referees consisting of three specialists to investigate, in relation to any claim for compensation, the nature of a disease named in the schedule and its relationship to any of the work processes listed opposite the disease in the schedule. The decision of such a committee is final and binding on the Board and the claimant as to the medical findings in the case.

The industrial diseases which are compensable under the provincial Acts are shown in a table beginning at page 35.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an industrial disease, and, if he refuses or fails to do so, his employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. The Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Acts contain special provisions setting out the conditions (such as residence qualifications, period of exposure to silica dust) upon which compensation may be granted. In Alberta, British Columbia, Newfoundland, Ontario, Quebec and Saskatchewan, silicosis is compensable when it occurs in a specific industry or industries; in the remaining provinces compensation is payable for silicosis occurring in any employment within the scope of the Act which involves the inhalation of silica dust.

WAITING PERIOD

Each Act provides for a "waiting period", the statutory minimum number of days during which a workman must be disabled from earning full wages in order to qualify for compensation. The waiting period under the Acts ranges from one to five days.

In Alberta, Manitoba, Newfoundland, Prince Edward Island and Saskatchewan, the waiting period is one day. No compensation is payable for the day on which an accident occurs, but if the worker is disabled for any longer time compensation is payable from and including the day after the accident.

The waiting period is three days in British Columbia; four days in New Brunswick and Nova Scotia; and five days in Ontario and Quebec. Where a

disability does not extend beyond the waiting period, the workman is not eligible for compensation. Where a disability continues beyond the waiting period, compensation is payable from the commencement of the disability.

The waiting period does not restrict the right of the workman to medical aid, which, under all the Acts, is given from the date of the accident.

MEDICAL AID

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they must be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiropody Act, and in Alberta and Saskatchewan, the term includes treatment by any person licensed under provincial law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners", defined as persons registered under the Chiropody Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act. In New Brunswick, medical aid includes the services of a registered chiropractor within his legal jurisdiction.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In the other nine provinces, the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. Workmen are entitled to have such apparatus kept in repair or replaced as the Board deems necessary or, in Alberta, British Columbia and Manitoba, as long as disability continues. The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan provide not only for repair and renewal of artificial members or appliances in case of ordinary wear and tear but also for replacement and repair of members and appliances which are broken in an accident arising out of and in the course of employment, and the Ontario Act provides further that, where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident. The Manitoba and Saskatchewan

Boards are authorized to pay an additional allowance to compensate an injured workman who wears a prosthetic device for the extra wear on his clothing caused by the use of such a device. The allowance payable by the Saskatchewan Board may not exceed \$96 a year in the case of a leg amputation and \$42 a year in the case of an arm amputation.

The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicines and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, the Board may replace and repair eye-glasses broken by an accident arising out of employment. With regard to broken dentures and eye-glasses, the British Columbia Board has authority to assume the expense of replacement and repair only "if such breakage is accompanied by objective signs of personal injury", and the Saskatchewan Board will do so "when breakage is occasioned by an accident in which the workman is injured sufficiently to require medical attention for which the board accepts responsibility". The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta, Nova Scotia and Ontario, provision is made in permanent total disability cases for such other treatment, services or attendance as may be necessary as a result of the injury. In Nova Scotia, an allowance for attendance may not exceed \$20 a month.

The Board may make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the Board is authorized to pay \$8 a day for the first seven days of treatment, and \$6 a day thereafter if a workman is maintaining a home with one or more dependants elsewhere, or \$4.50 a day if a workman is not maintaining a home. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, in Alberta, British Columbia, Manitoba and Quebec, the Board is authorized to permit the workman to be treated by the physician of his own choice (in the British Columbia and Manitoba Acts, "the physician who may be selected or employed by the injured workman or his employer"). While the other Acts make no mention of choice of doctor, the usual practice is for the workman to be allowed to select his attending physician. Once a selection is made, however, he may not change doctors without the permission or approval of the Board.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In Alberta, in cases of dispute, the

Board, if requested by the workman in writing, must nominate not less than four recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of them to conduct the examination. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board.

Similar provision for a medical appeal is made in British Columbia where a review of a workman's case may be requested by either the workman or his employer. Under the appeal procedure, the workman is examined by a Medical Review Panel, consisting of a chairman appointed by the Lieutenant-Governor in Council and two other members, selected by the workman and employer, respectively, from a list of specialists drawn up by a Government-appointed medical committee. The decision of the panel is conclusive and binding upon the Board and is not open to court review.

In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a disputed medical question. The Workmen's Compensation Board is required to act upon the decisions of the review board, which are effective from the date on which the board was appointed.

A system of medical review in appeal cases is also provided for in the Saskatchewan Act. In that province a workman who requests a reconsideration of his claim on medical grounds may be examined by a specialist chosen by himself from a list of three specialists provided by the Board. After receiving the specialist's report, the Board is required to review the claim and notify the workman of its decision.

In Manitoba, an injured workman who feels aggrieved at a medical decision concerning his case has a right of appeal to a Medical Board of Reference, consisting of a chairman and deputy chairman appointed by the Manitoba Medical Association, one doctor named by the injured workman, one named by the employer, and one by the Workmen's Compensation Board from a panel of specialists furnished by the Medical Association. After reviewing the case and examining the workman, the Medical Board of Reference is required to report its findings to the Board.

In all provinces the fees for medical aid are fixed by the Board.

EMPLOYERS' SCHEMES FOR MEDICAL AID

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident

Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Acts state that employers' schemes for medical aid may be approved, subject to such conditions as the Board may impose. In Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, the Acts stipulate that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board.

MEDICAL AID FOR SEAMEN

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under its provisions for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

FIRST AID

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

REHABILITATION

To aid in getting workmen back to work and in lessening any handicap resulting from their injuries, a Board may adopt any means considered expedient and pay the cost from the Accident Fund. Except in Alberta, British Columbia, Nova Scotia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$10,000 in Manitoba and Prince

Edward Island; \$15,000 in Newfoundland; \$50,000 in New Brunswick; \$200,000 in Ontario; and \$300,000 in Quebec. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in retraining and rehabilitation. In 1958 the Newfoundland Board was given authority to spend up to \$25,000 in a year for academic or vocational training for injured workmen.

ACCIDENTS OCCURRING OUTSIDE THE PROVINCE

The Act in each province makes provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs outside the province if the employer has a place of business in the province and the residence and usual place of employment of the workman are in the province, and provided that employment out of the province has lasted less than six months. The British Columbia and Quebec Acts stipulate that employment outside the province must be the direct continuation of employment in the province in the service of the same employer. In Ontario, an extension of coverage beyond the six-month period may be granted by the Board at the request of the employer.

A further provision in the Ontario Act states that a workman is entitled to compensation for an accident which happens while he is outside the province "merely for some temporary purpose connected with his employment" even though his residence is outside the province, if his usual and principal place of business is in Ontario.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province is a continuation of employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits.)

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is temporarily engaged outside the province on the business of the employer, provided that his residence and usual place of employment are in the province, and the employer has an established place of business in the province.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight

months. In these three provinces and in Manitoba and Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if a place of business of the employer and the residence and usual place of employment of the workman are in the province. In Manitoba, members of a fire brigade or other municipal employees are eligible for compensation under this section of the Act for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation for an accident which occurs outside the province where he is required to perform his work both in and out of the province, and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident in Ontario to compensation for an accident which happens out of Ontario on a ship or vessel if the ship is registered in Canada or the owner or charterer has his chief place of business in Ontario, whether or not the workman had been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that, where a workman is engaged in work part of which is to be performed in the province and part in another province or country (in Saskatchewan, an adjoining province or country), the work is con-

sidered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workman is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, New Brunswick, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay the other Board for any payment of compensation made under such an arrangement.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

NON-RESIDENT WORKMEN AND DEPENDANTS

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law provides that, where compensation is payable to

dependants residing outside of Canada, the Board may award them such lesser sum as, in its opinion, would at the date of death maintain them in a like degree of comfort as dependants of the same class in Canada. The Act further provides that any such dependant who subsequently becomes a resident of Canada is to receive compensation, for the period of his residence in Canada, according to the scale provided for a dependant resident in Canada at the time of the workman's death.

The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada, authorizing the Board to pay such smaller sum by way of compensation as, according to the conditions and costs of living in the place of residence, would maintain the dependants in a like degree of comfort as dependants of the same class residing in Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in the Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependants of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under the law resided in one of these provinces and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

SECURITY FOR PAYMENT OF COMPENSATION

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-

half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province, where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the three months preceding the bankruptcy and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

ACCIDENT PREVENTION

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice must be given, and the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. Safety regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. The New Brunswick Board was given authority by a 1958 amendment to the Act to make regulations, subject to the approval of

the Lieutenant-Governor in Council, for the prevention of accidents and the taking of safety measures in the industries of construction, demolition and excavation.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where, in the Board's opinion, conditions of immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures are taken.

In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases, and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. An accident prevention committee must be organized in every plant in Alberta and Newfoundland employing 10 or more workmen, and in every plant in British Columbia with 20 or more employees.

In the Acts of New Brunswick, Nova Scotia, Ontario and Quebec the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations, organized under the authority of the Act for that purpose. The associations operate on funds received from the Workmen's Compensation Board but all such funds are charged against the industries in the class or classes which the association represents. In New Brunswick and Nova Scotia, one accident prevention association covers each province. In Ontario, employers in 17 of the classes of industry covered by the Act (representing practically all manufacturing except paper-making) are associated in one body, called the Industrial Accident Prevention Associations. Seven classes of industry, construction, pulp and paper, lumbering, mining, electrical work, transportation and highway construction, have separate associations. In Quebec, employers in pulp and paper, lumbering, metal mining and public utilities are organized in separate associations, and employers in other classes are associated in one body, the Industrial Accident Prevention Association.

The Newfoundland and Saskatchewan Acts, in addition to vesting wide authority for accident prevention in the Board, as noted above, provide for the setting up of accident prevention associations (associations of employers in Newfoundland, associations of employers and workmen in Saskatchewan). The Prince Edward Island Act also makes provision for the formation of associations of employers for accident prevention purposes. In Saskatchewan, accident prevention associations have been formed in a number of industries. In 1956 an industrial safety association was formed in Newfoundland to promote accident prevention in all industries under the Act.

Accident prevention associations have statutory authority to make rules for the prevention of accidents. The Newfoundland, Nova Scotia and Prince Edward Island Acts provide that, if the Board approves the rules, they become binding upon all employers in the class or classes, whether members of the association or not. In New Brunswick, Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers (in Saskatchewan, employers and workmen) affected, and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. In practice, while associations may issue rules of safe work practices, they are not given binding force and there is no means of enforcing compliance with them. Most of the associations employ a staff of inspectors whose duties are to visit the industries in the membership, to advise on how to correct hazards, and to assist the employer to set up machinery within his plant for the prevention of accidents. In addition to their plant survey and injury investigation activities, the work of associations extends to all forms of safety education and safety promotion. Where an association appoints safety inspectors, the Board may pay the whole or part of their salaries out of the Accident Fund but, as already indicated, moneys paid by the Boards for such purposes are charged to the classes represented by the association concerned.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the directions of the Board, it may collect from the employer, in British Columbia, the amount of the compensation payable, not exceeding \$1,000 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta, Ontario, Quebec and Saskatchewan, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate, or, in Alberta and Ontario, that first aid requirements have not been complied with, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may exclude the industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS¹

ACCIDENTS

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on page 12.

AGRICULTURE

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

¹ In addition to the Conventions and Recommendations noted under this heading, the International Labour Conference has dealt with employment injury benefit in Part VI of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council (page 15).

OCCUPATIONAL DISEASES

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see page 35.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

MINIMUM SCALE OF COMPENSATION

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits, and dependent parents and grandparents.

In the Canadian provinces compensation is payable on the basis of seventy-five per cent of earnings but in all provinces a limit is placed on the maximum annual earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in Quebec where the normal age is 18 and in New Brunswick where it is 21. In New Brunswick, however, payments cease if the child does not attend school up to 21 years. Exceptions are made for invalid children in all provinces. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, compensation may be paid to the age of 18 to assist a child to continue his education. In Saskatchewan, payments for educational purposes may be made to the age of 19.

EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 27.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claims originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

JURISDICTION IN DISPUTES

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations or elected by

bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

INDUSTRIAL DISEASES COMPENSATED BY PROVINCES

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in British Columbia, Manitoba, New Brunswick, Ontario and Quebec any disease that is peculiar to an industrial process, trade or occupation may be compensated. In Alberta, British Columbia and New Brunswick, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria. In Quebec, compensation is payable for any contagious disease contracted by a hospital employee which can be shown to have been due to the nature of his employment.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered	British Columbia
Anthrax; Arsenic poisoning or its sequelae; Lead poisoning or its sequelae; Mercury poisoning or its sequelae; Phosphorus poisoning or its sequelae	All provinces
Ammonia poisoning or its sequelae	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	British Columbia, New Brunswick, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino-derivatives, anilin and others	Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds	Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work	Saskatchewan
Brass, zinc or nickel poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan

Bronchitis and pulmonary oedema in any process using oxyacetylene or electric arc for cutting or welding	British Columbia
Bursitis (see also Cellulitis)	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
—acute, elbow	British Columbia, Newfoundland, New Brunswick, Nova Scotia
—prepatellar	British Columbia, New Brunswick
Cadmium poisoning	Ontario, Quebec, Saskatchewan
Cancer arising from the manufacture, handling or use of pitch or tar	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan
Carbon dioxide poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis, subcutaneous, hand	Alberta, British Columbia, Newfoundland, Nova Scotia
—, —, patella	British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlorethylene, tetrachlorethane, trichloromaphthalene and others), poisoning by or its sequelae	British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning	Saskatchewan
Chrome poisoning	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using	British Columbia
Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or handling cold materials	British Columbia
Compressed air illness	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gases, fumes, vapours, mists or smoke	British Columbia

Conjunctivitis and/or retinitis due to electro- and oxyacetylene welding.....	British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of	British Columbia
Cyanide poisoning	Saskatchewan
Dermatitis and occupational ulcerations and infections of the skin.....	Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours	Alberta
Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manufacturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks, or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen	British Columbia
Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it.....	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan
Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding.....	British Columbia
Glanders	Alberta, New Brunswick, Saskatchewan
Heat exhaustion	British Columbia
Infection from handling sugar.....	New Brunswick

Infected blisters from any process involving continuous friction, rubbing or vibration	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper	British Columbia
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	Saskatchewan
Nickel and its compounds, dermatitis in any process using	British Columbia
Nitrous fumes, poisoning by, or its sequelae	British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to	Saskatchewan
Pneumoconioses other than silicosis	Ontario
Pneumoconiosis	New Brunswick
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis-producing dust	British Columbia
Pneumoconiosis, coal miners', in coal mining	Nova Scotia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending—Saskatchewan).....	British Columbia, Saskatchewan
Poisoning in any process where there is exposure to methyl chloride	British Columbia
Poisoning caused by chemicals used in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever) from employment under Part I of the Act	British Columbia

Pulmonary and respiratory irritation from exposure to vapours, mists or dust.....	British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry.....	Ontario
Rhinitis from contact with allergens or chemical vapours or dust.....	British Columbia
Salmonellosis from employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act.....	British Columbia
Seal finger in handling seals or seal products	Newfoundland
Silicosis	New Brunswick, Prince Edward Island
Silicosis in mining.....	Newfoundland
Silicosis in any industry under Part I of the Act	Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal - Quebec)	Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous-mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust.....	British Columbia
Silicosis in making pottery.....	Quebec
Staphylococcus aureus, infection by, from employment under Part I of the Act in same places of employment as for salmonellosis (see above)	British Columbia
Stone workers' or grinders' phthisis	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan

Tenosynovitis, tendonitis, inflammation affecting the sheaths and tendons (wrist only—Newfoundland and Saskatchewan)	British Columbia, Newfoundland, Nova Scotia, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist	British Columbia
Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear	British Columbia
Tuberculosis from employment under Part I of the Act in same places of employment as for salmonellosis	British Columbia
Tuberculosis contracted by a workman employed in a hospital, jail, sanatorium, convalescent home, nursing home, home for the aged, health unit or visiting nursing association to which Part I of the Act applies or in a laboratory, reform institution, health unit or treatment centre operated by the Province	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work.....	British Columbia, New Brunswick, Prince Edward Island, Quebec, Saskatchewan
Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities)	British Columbia, Saskatchewan
Wool alcohol, poisoning by	British Columbia, Saskatchewan
X-rays, radium or other radio-active substances, any disease due to exposure to	British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan
—carcinoma or malignant disease arising from radiation.	Newfoundland, Quebec

SCALE OF COMPENSATION

The tables on the following pages show the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or Invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$300 ⁴	\$75 plus sum of \$200	Under 16, \$25 each ¹	NEWFOUNDLAND Under 16, \$35 each ¹	Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child, unless total benefits exceed \$150 ³
\$300 ⁴	\$65 plus sum of \$200	Under 16, \$20 each. ¹ Maximum to consort and children, \$170	PRINCE EDWARD ISLAND Under 16, \$30 each. ¹ Maximum \$120	As in Newfoundland. Maximum to parent or parents, \$40. Maximum in all, \$60 ²	75% of earnings, but Board may waive the 75% restriction where circumstances require it ³
\$250 ⁴	\$75 plus sum of \$150	Under 16, \$25 each ¹	NOVA SCOTIA Under 16, \$35 each ¹	As in Newfoundland. Maximum \$45 each. Maximum in all, \$60 ²	
\$300 ⁴	\$75 plus sum of \$200	Under 21, if attending school, \$25 each ¹	NEW BRUNSWICK Under 21, if attending school, \$50 each ¹	As in Newfoundland ²	75% of \$4,000 per year ³
\$400 ⁴	\$75 plus sum of \$300	Under 18, \$25 each ¹	QUEBEC Under 18, \$35 each ¹	As in Newfoundland ²	75% of earnings. Minimum \$100 to consort and one child; \$125 to consort and two children; \$150 to consort and more than two children ³
\$300 ⁴	\$75 plus sum of \$300	Under 16, \$25 each ¹	ONTARIO Under 16, \$35 each ¹	As in Newfoundland. Maximum \$100 ²	Average earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$200 ⁴	\$75 plus sum of \$300	Under 16, \$35 each ¹	MANITOBA Under 16, \$45 each ¹	Maximum to wholly dependent mother, \$75. Other dependants — as in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ²	75% of earnings. Minimum \$75 to consort; \$110 to consort and one child; \$145 if more ³

SASKATCHEWAN

	\$110 plus sum of \$300 ⁵	Under 16, \$45 each ¹	Under 16, \$60 each plus a sum not exceeding \$50 at the discretion of the Board ¹	As in Newfoundland ²	Average earnings. Minimum \$110 to consort; \$155 to consort and one child; \$200 to consort and two children and \$20 for each additional child ^{3,6}
\$250 ⁴					
				ALBERTA	
\$250 ⁴	\$75 plus sum of \$200	Under 16, \$40 each ¹	Under 16, \$40 each plus an amount not exceeding \$25 to any child under 18 ¹	As in Newfoundland. Maximum to parent or parents, \$50. Maximum in all, \$85	
				BRITISH COLUMBIA	
\$250 ⁴	\$90 plus sum of \$250	Under 16, \$35 each ¹ ; if attending school, \$35 between 16 and 18 years	Under 18, \$40 each ¹ ; \$37.50 if able to attend school between 16 and 18 years and not attending	(a) As in Newfoundland. Maximum \$90 to parent or parents. Maximum in all, \$90 (b) If there is widow or invalid widower or orphans, maximum to parent or parents, \$90 ²	

¹In Manitoba, Alberta, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, payments to children may be made up to 18 years, and in Saskatchewan up to 19 years, if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

²Compensation in these cases is continued so long as Board considers workman would have contributed to support.

³For maximum earnings that may be reckoned, see Table 2, Column 5.

⁴For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta, British Columbia, Nova Scotia and Prince Edward Island may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Alberta, Manitoba and Saskatchewan, compensation may include payment for a burial plot, not exceeding \$50.

⁵Monthly pension of \$75 after the age of 70.

⁶If consort is over 70, amounts are \$75, \$110 and \$145, respectively.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT			TEMPORARY		Maximum Earnings Reckoned
Total	Partial		Total	Partial	
75% of earnings. Minimum \$65 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident. ^{1,2}	NEWFOUNDLAND	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability. ^{1,2}	\$4,000 per annum
		PRINCE EDWARD ISLAND	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability. ^{1,2,3}	\$5,000 per annum (effective January 1, 1963)
75% of earnings. Minimum \$110 per month or if the workman has more than one child under 16, the amount which a widow with the same number of children would receive	75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury. ¹ If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹	NOVA SCOTIA	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability. ^{1,2}	\$4,200 per annum
		NEW BRUNSWICK	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 75% of diminution of earning capacity for duration of disability	\$4,000 per annum
Average earnings but not in excess of 75% of \$4,000	Amount determined by Board based on impaired earning capacity	QUEBEC	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability. ^{1,2}	\$5,000 per annum

75% of earnings. Minimum \$100 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	ONTARIO 75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or, where deemed just, compensation may be based on impaired earning capacity estimated from the nature of the injury ¹	MANITOBA 75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ¹	\$5,000 per annum
75% of earnings. Minimum \$30 per wk.	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	SASKATCHEWAN 75% of earnings for duration of disability. Minimum \$30 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability ²	\$115.38 ⁶ / ₁₃ per week (\$6,000 per annum)
75% of earnings. Minimum \$35 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury ¹	ALBERTA 75% of earnings for duration of disability. Minimum \$35 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	BRITISH COLUMBIA 75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum

¹If earning capacity is diminished 10% or less (5% or less in Alberta), a lump sum may be given.

²The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

³The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.



CANADA

*Labour, Dept. of
Legislation Branch*

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A Comparison of Provincial Laws

OCTOBER, 1963

DEPARTMENT OF LABOUR OF CANADA

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Price 35 cents Catalogue No. L2-6/1963

Price subject to change without notice

ROGER DUHAMEL, F.R.S.C.

Queen's Printer and Controller of Stationery

Ottawa, Canada

1964

FOREWORD

This bulletin, which analyzes and discusses in some detail the main points of the Canadian system of workmen's compensation, is revised annually to incorporate legislative changes made during the year. The scale of benefits and the occupational diseases for which compensation is payable are set out in tables, permitting comparisons between provinces. A summary of the provisions of the conventions and Recommendations of the International Labour Conference on workmen's compensation is included.

The bulletin was prepared by Miss Evelyn Woolner.

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Director,
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CONTENTS

	PAGE
Introduction	1
Changes in Workmen's Compensation Laws in 1963	2
Individual Liability	6
Federal Government Employees	9
Blind Workmen	10
Workmen's Compensation Boards	10
Cost of Administration	11
Scope of Laws	12
Farm Labourers and Domestic Servants	14
Casual Workers and Outworkers	14
Seamen	15
Risks Covered	16
Industrial Diseases	17
Waiting Period	19
Medical Aid	19
Employers' Schemes for Medical Aid	22
Medical Aid for Seamen	22
First Aid	23
Rehabilitation	23
Accidents Occurring Outside the Province	23
Non-resident Workmen and Dependants	26
Security for Payment of Compensation	27
Accident Prevention	28
International Labour Conventions and Recommendations	31
Industrial Diseases Compensated by Provinces	34
Scale of Compensation	37

INTRODUCTION

Each of the Canadian provinces has a Workmen's Compensation Act which provides that, in any industry to which the Act or the main part of it applies, workers who sustain personal injury by accident arising out of and in the course of their employment or who are disabled by specified industrial diseases are entitled to compensation. The only exceptions are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period" p. 19); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

All of these Acts are of the "collective liability" type, that is, compensation is payable by employers collectively. The industries covered by the Act are divided into groups and the employers in each group are collectively liable for the payment of compensation to the workmen employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund, and compensation and medical aid to injured workmen are paid by the Workmen's Compensation Board out of the Fund. No contributions from employees, either directly or indirectly, are permitted.

Industries are classified according to their hazard and each class is liable for the cost of accidents occurring in that class although for the purpose of compensation the Accident Fund is one. At the beginning of each year an employer is required to send to the Board a statement of the amount of the wages paid by him during the preceding year and an estimate of his payroll for the current year. The Board fixes a provisional contribution rate, a percentage of payroll, for each class which will produce sufficient funds to meet all claims payable during the year. Assessment is made at the provisional rate on the estimated payroll. At the end of the year the assessment is adjusted according to the actual payroll and to the accident experience of the group or class. If necessary, the provisional rate is altered to meet the requirements of the year.

The right to compensation is not affected by the employer's neglect or refusal to furnish information or to pay his assessment or by his insolvency. The compensation to which a workman is entitled under the Act takes the place of his right of action, and he may not sue his employer in court for damages for an injury received in the course of employment.

All claims for compensation are received and adjudicated by the Workmen's Compensation Board whose decision is final.

Benefits under the Acts include periodic payments to the workman during the period of temporary disablement (in all provinces on the basis of 75 per cent of average earnings, subject to the maximum annual earnings provided in the Act); an award for permanent disability (based on 75 per cent of average earnings) in the form of a monthly pension for life or, when disablement is slight, paid in a lump sum; all necessary medical aid, including hospitalization; and rehabilitation.

In case of death by accident, fixed monthly payments are made to dependants. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

In all provinces but Prince Edward Island this compulsory state system of collective liability replaced a system of individual liability on the part of the employer as provided for in earlier statutes. The collective liability system of state insurance was adopted in Ontario in 1914 following a comprehensive report on employers' liability for accidents by a special commissioner appointed to inquire into the subject. Nova Scotia followed Ontario's example with variations in some points in 1915, British Columbia in 1916, Manitoba in 1916 in respect to collective liability but not state insurance until 1920, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts vary from province to province in some particulars, the main principles are the same, all the Acts having been modelled on the Ontario statute. Amendments are made from time to time and there is an increasing tendency towards uniformity.

In some provinces, it is the practice to have a periodic review of the operation of the Workmen's Compensation Act, and employers, employees and other interested parties are given an opportunity to make representations. In Saskatchewan, the Act provides for the appointment of a Committee of Review equally representative of employers and organized employees every four years. In Newfoundland, provision was made in a 1959 amendment for a review of the Act by a committee of three or more members at least once in every five years. The Alberta Act is reviewed by a special committee of the Legislature every four years. In recent years Royal Commissions have inquired into the operation of workmen's compensation laws in Ontario, British Columbia, Manitoba and Nova Scotia. The Roach report in Ontario and the Sloan report in British Columbia were made in 1950 and 1952, respectively. The reports of the Hon. W. F. A. Turgeon in Manitoba and of Mr. Justice McKinnon in Nova Scotia were completed in 1958. The DesBrisay Royal Commission appointed in British Columbia in 1962 continued its inquiry in 1963.

CHANGES IN WORKMEN'S COMPENSATION LAWS IN 1963

Five provinces—Manitoba, New Brunswick, Ontario, Prince Edward Island and Quebec—amended their Workmen's Compensation Acts in 1963.

The Quebec Legislature made provision for wider coverage of the Act. The maximum annual earnings on which compensation is based were increased from \$5,000 to \$6,000 in Ontario. Both Ontario and Quebec reduced the waiting period from five days to three. In Quebec, the minimum payment for total disability was raised from \$15 to \$25 a week. Another amendment provided that, where a workman is temporarily or permanently disabled as the result of the aggravation of an injury which had occurred more than five years earlier, his compensation is to be based on his earnings at the time of the aggravation. Ontario revised its definition of "accident", enabling the Board to award compensation for any work-caused injury or disablement. Manitoba increased from \$10,000 to \$30,000 the amount

which the Board may spend annually on the vocational training of injured workmen, and in Quebec the annual limit of \$300,000 on rehabilitation expenditures was removed. In Manitoba and Quebec, the conditions under which compensation is payable for silicosis were relaxed.

The maximum allowance for payment of funeral expenses was raised in Quebec. Increased pensions were provided for dependent children in Ontario, and the increases were made applicable to all children in receipt of compensation. Dollar limits on the monthly compensation payable to a widow and children or to a family of orphans were removed in Prince Edward Island. The Prince Edward Island Board was also authorized to pay compensation at its discretion, in respect of a child who is continuing his education, to the age of 21 instead of 18, as previously. An amendment in Quebec, applicable to all children receiving compensation, regardless of the date of the accident, enables a child to be paid compensation as long as he attends school. For a child who is not attending school the age limit continues to be 18.

MANITOBA

The *Manitoba Act* was amended to increase from \$10,000 to \$30,000 the sum which the Board may spend annually for vocational training.

Further amendments enable the Board to reconsider claims for compensation for silicosis which were previously rejected because they were not made within a year after the workman left his employment in the industry in which he was exposed to silica dust, or because he had ceased to be resident in Manitoba before becoming disabled.

A workman who had left Manitoba before becoming disabled may now make a claim in writing under this section and, if the Board considers that exposure in Manitoba was a major factor in bringing about his disablement, it may award him compensation.

The designation of the three members of the Manitoba Workmen's Compensation Board was changed from a commissioner and two directors to a chairman and two commissioners.

NEW BRUNSWICK

Amendments to the *New Brunswick Act* in 1962 provided for increased payments to disability pensioners in respect of past accidents. At the 1963 legislative session, the section stating that, where a claim was reopened for weekly compensation after a lapse of two years, the Board had discretionary authority to pay the workman compensation on his current earnings was further amended to make it clear that compensation is to be paid on the scale provided by the Act at the time of the reopening of the claim. This amendment was made effective from January 1, 1963, the date of the earlier amendment.

The monthly benefit payable under the special Act passed in 1955 to provide compensation for workmen who contracted silicosis before June 1, 1948, was raised from \$60 to \$75, effective from June 1, 1963. The Act is administered by the Workmen's Compensation Board but funds are provided from the Consolidated Revenue Fund.

ONTARIO

The definition of "accident" in the *Ontario Act* was broadened by the addition of the words "disablement arising out of and in the course of employment." "Accident" is now defined, as in a number of other provinces, to include (1) a wilful and intentional act, not being the act of the workman, (2) a chance event occasioned by a physical or natural cause, and (3) disablement arising out of and in the course of employment. The new definition gives the Board greater scope in granting compensation to injured workmen.

The Act was further amended to reduce the waiting period from five to three days. A workman who is forced to be off work because of accidental injury for less than three calendar days is entitled to free medical aid but is not eligible for compensation. To be eligible for compensation he must be disabled for three days or longer.

Effective from July 1, 1963, the maximum annual earnings of a workman on which compensation may be computed, and which may be included in the employer's payroll for assessment purposes, were increased from \$5,000 to \$6,000. Saskatchewan is the only other province with a \$6,000 wage ceiling.

The wording of the section which sets out the compensation payable for temporary partial disability was changed to bring it into line with present administrative practices of the Board. The Act, as it previously read, stated that compensation to a workman with a temporary partial disability was to be a weekly payment of 75 per cent of the difference between his average weekly earnings before the accident and the amount that he was earning or was able to earn after the accident. The amendment struck out the words "is able to earn" and substituted the words "is physically capable of earning, as determined by the Board", with the result that the section now provides that compensation is to be 75 per cent of the difference between the earnings of the workman before the accident and the amount that he is earning or is physically capable of earning, as determined by the Board, in some suitable employment after the accident.

The allowance for a child under 16 with one parent was raised from \$25 to \$40 a month, and for an orphan child from \$35 to \$50. These increases were made applicable from July 1 to all children in receipt of compensation.

Rural school boards, previously exempted, were brought under the Act. All school boards in the province are now covered.

Certain administrative changes were also made in the Act. These enable the Board to award costs in proceedings before it, and give it increased powers of collection against employers.

PRINCE EDWARD ISLAND

Amendments to the *Prince Edward Island Act* removed the dollar ceilings on monthly payments to a widow and children and to orphan children. Previous to the amendment, the former were limited to \$170 and the latter to \$120. As in several other provinces, the Act provides that total monthly payments to dependants in death cases may not exceed 75 per cent of the average earnings of the deceased workman.

The Board was empowered in another amendment to pay compensation at its discretion to the age of 21 in respect of a child who is continuing his education, rather than to the age of 18, as previously.

QUEBEC

In *Quebec*, as in Ontario, the waiting period was reduced from five days to three.

The minimum payment for total disability was raised from \$15 to \$25 a week. Further amendments provided that, where it is established to the satisfaction of the Workmen's Compensation Commission that a workman is temporarily or permanently disabled as a result of an aggravation of an injury which had occurred more than five years earlier, compensation is to be based on the workman's current earnings, if greater than those on which his previous compensation was based. In either case, the degree of disability for which the workman had already been compensated must be deducted.

Changes made in the Act in 1955, previously applicable only in case of accidents occurring after January 1, 1956, were declared to apply to any accident, whether occurring before or after that date. As a result of this amendment, disability pensions based on lower rates of earnings will now be paid at the rate of 75 per cent, and a pension to an invalid child may be paid as long as invalidity lasts, regardless of the date of the accident.

The provision limiting rehabilitation expenditures to \$300,000 a year was repealed, leaving the Commission free to spend for such purposes whatever amount it thinks proper.

The minimum period during which a workman must have been exposed to the inhalation of silica dust in his employment in the province in order to be eligible for compensation for pneumoconiosis (including silicosis and asbestosis) was reduced from five years to two.

In another amendment, the period during which a workman may be employed outside the province and retain the protection of the Act was extended from 5 to 18 months.

Under this section, a workman usually employed and residing in the province is entitled to compensation for an accident that occurs when he is employed outside the province providing his employer's place of business is in the province, and his employment outside the province does not exceed the time specified, and is the direct continuation of employment in the province in the service of the same employer. Compensation is payable, however, only if the workman is not granted compensation under the law of the place where the accident happens.

Two changes were made in the benefits payable in fatal cases. The maximum amount payable for funeral expenses was raised from \$400 to \$600.

A second amendment permits a child to be paid compensation as long as he is regularly attending school. This provision, effective from August 1, was made applicable to all children receiving compensation, regardless of the date of the accident. For children who are not attending school, the age limit for the payment of compensation continues to be 18.

Provision was made for the coverage of the Act to be extended. Two sections, one limiting the application of the Act to the industries enumerated in Schedules 1 and 2 and to such other industries as might be added under the authority of the Act, and the other enabling the Commission to exclude industries in which not more than a stated number of workmen are usually employed, were repealed, the repeal to take effect on a date to be fixed by proclamation.¹ With the repeal of these two sections, coverage may be extended to all types of employment in the province, except farming and domestic service.

The Act was also amended to require an employer to notify the Commission of an accident to a workman in his employ within the two working days immediately following its occurrence, instead of within eight days, as previously. The notice must be written in the mother tongue of the injured person, if that is English or French, and otherwise in whichever of these languages he chooses. The notice must not be signed by the workman until all the blanks have been filled in, and the employer is required to give him a completed copy.

Medical and hospital reports regarding an injured workman's condition must be submitted to the Commission only, and need no longer be furnished to an employer included in Schedule 2 (those employers who are individually liable). If an injured workman or his employer requests a copy of a medical report, the Commission is required to send one to the workman's physician or the employer's physician, as the case may be.

A new section was added to state that, when an industry is transferred from Schedule 2 to Schedule 1, with the effect that compensation for future accidents would be paid from the Accident Fund and not by the individual employer, the Commission may assume responsibility for the payment of benefits resulting from previous accidents, provided that the employer or insurer pays to the Accident Fund a reserve established in accordance with the law in force at the time of the accident.

A final amendment requires the Commission to state the grounds on which its decisions are based.

INDIVIDUAL LIABILITY

In addition to the general systems of collective liability, laws of the individual liability type providing for payment of compensation by the employer concerned are in operation in certain areas of employment.

Under the Ontario and Quebec Acts, public authorities and certain large corporations are permitted to carry their own liability for accidents to their employees. In the fishing and dredging industries in Nova Scotia, in the fishing industry in Newfoundland, in employment under workmen's compensation ordinances of the Yukon and Northwest Territories, and in shipping covered by the Merchant Seamen Compensation Act, the employer is individually liable to pay compensation. Under the Nova Scotia and Newfoundland provisions, however the employer is required to pay compensation on the finding of a court to that

¹ Although these sections have not yet been proclaimed, all regulations excluding industries in which not more than a stated number of workmen are usually employed were repealed as of January 1, 1964.

effect whereas the adjudication under the territorial ordinances is made by the Alberta Workmen's Compensation Board and under the Merchant Seamen Compensation Act by a board set up for the purpose. A further type of individual liability is that provided for in Part II of the Acts of certain provinces which enables a worker outside the collective liability system to bring an action for negligence against his employer, and by which certain defences available to the employer were removed.

While most industries in Ontario and Quebec are under the collective liability system, certain large corporations of the classes enumerated in Schedule 2 of the Acts are individually liable to pay compensation and provide medical aid for the workmen in their employ. These include railway, street railway, express, telegraph and Dominion telephone companies; navigation and steamship companies; municipal corporations; and the Crown in right of the Province. Such employers do not contribute to the Accident Fund but contribute their proportion of the costs of administering the Act. The amount of compensation payable and all other questions are determined by the Workmen's Compensation Board as in the case of accidents for which compensation is paid from the Accident Fund, and compensation is paid through the Board.

In Nova Scotia, Part III of the Act provides that compensation for accidents to persons employed in dredging or fishing, including seal fishing, shall be paid by the employer, who is required to insure to the extent of his liability with an insurance company. Compensation in these industries does not include medical aid or the right to rehabilitation, but in other respects is on the same scale as in other industries. Payment, however, is enforced by an action in the courts and the Workmen's Compensation Board is not concerned with it.

Masters and members of the crews of fishing vessels in Newfoundland retain the protection of the 1948 individual liability Workmen's Compensation Act which was repealed in 1951 except with respect to its application to fishermen.

In British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario and Prince Edward Island, the Workmen's Compensation Act is divided into two Parts. In Nova Scotia, as indicated above, there are three Parts. Part II of these seven statutes applies to industries to which Part I, providing for a provincial system of collective liability, does not apply. It is stipulated in Part II that a worker in an industry which is not under Part I of the Act, that is, not within the system of collective liability or of personal liability in the case of certain large employers in Ontario as administered by the Workmen's Compensation Board, has right of action against his employer for injury sustained in an accident caused by any defect in the machinery or plant of the employer or caused by his negligence or that of any persons employed by him. The fact that the worker continued in the employment with the knowledge of any defect or negligence is not a bar to the recovery of damages. Negligence on the workman's part may be a factor in determining the amount of damages. Thus, the workers in industries outside the workmen's compensation scheme, under which all accidents occurring to workmen within the scope of the scheme and arising in the

course of employment are compensated without recourse to the law courts, are protected in some measure by the adoption of these principles which distinguish employers' liability from workmen's compensation and from the common law.

Ordinances of the Yukon and Northwest Territories make the employer individually liable to pay compensation and require him to carry accident insurance for his workmen in an approved company unless he has made other arrangements satisfactory to the Commissioner of the Territory.

Under both Ordinances the Alberta Workmen's Compensation Board acts as Referee to determine disputed claims. Claims for permanent disability are referred by the Commissioner to the Referee for determination. Claims for temporary disability are settled by the insurer. If an employee is dissatisfied with the disposition of his claim, however, he may apply to the Commissioner to have his claim reviewed by the Referee.

The provisions of the Ordinances with respect to coverage, compensable industrial diseases, etc., are substantially the same as those of the Alberta Act. Both Ordinances provide that, where a workman is off work for six days or less, he receives medical aid but no compensation for the first three days of his disability. Only if a disability lasts for more than six days may a workman recover compensation from the date of the accident.

Both Ordinances were amended in 1961 to increase the compensation payable to widows and children with respect to accidents occurring after the effective date of the amendments. Lower scales of benefits remain in effect for pensioners in receipt of pensions as a result of earlier accidents.

Under the Northwest Territories Ordinance, a widow is entitled to \$300 for burial expenses, a lump sum of \$300, and, with respect to an accident occurring on or after January 1, 1962, a monthly pension of \$90 payable until remarriage or death and \$35 a month for each dependent child under 16. Under the Yukon Ordinance, the corresponding amounts are \$250 for burial expenses, \$300 as a lump sum payment, and, with respect to accidents occurring on or after July 9, 1961, a pension of \$100 a month to a widow and \$35 a month for the first two children in a family and \$20 a month for each additional child. The allowance to a dependent child is now payable to the age of 18. Under both Ordinances, an additional payment, not exceeding \$10 a month, may be made, at the discretion of the Referee, to an orphan child under 16. Where the only dependants are persons other than widow and children, compensation is to be a sum determined by the Referee in proportion to the pecuniary loss sustained, not exceeding \$75 a month to a parent or parents or \$100 a month to all such dependants.

A workman who is permanently and totally disabled is entitled to receive a life pension equal to 75 per cent of his average weekly earnings. In any case he may not receive less than \$25 a week or his full earnings, if less than \$25. For a workman with a permanent partial disability, compensation is a proportion of 75 per cent of his average earnings, depending on impairment of earning capacity as a result of the injury. In computing average earnings, the maximum amount of annual earnings which may be taken into account is \$4,000 in the Yukon Territory (with respect to an accident occurring on or after January

1, 1956) and \$4,500 in the Northwest Territories (with respect to an accident occurring on or after January 1, 1962). Under both Ordinances, lower ceilings are applicable with respect to earlier accidents.

In addition to compensation payments, the injured workman is entitled to medical aid, the cost of which is borne by the employer.

In 1958 amendments to both Ordinances the Referee was given authority to require payment by the employer or insurer of the expenses of occupational retraining of a permanently disabled workman, up to an amount not exceeding \$5,000.

A federal individual liability statute, the Merchant Seamen Compensation Act, 1946, covers seamen who are not within the scope of a provincial workmen's compensation Act. This Act is described on page 15.

FEDERAL GOVERNMENT EMPLOYEES

The Government Employees Compensation Act, which was first enacted in 1918, provides for the payment of compensation, medical and hospital expenses and other benefits to employees of the Government of Canada for disablement from accident or industrial disease arising out of their employment. In the case of the death of the employee from such accident or disease, his dependants are entitled to benefits under the Act. The general principle of the Act is that the compensation benefits payable to an employee of the Crown are to be the same as those provided for employees employed in private industry under the workmen's compensation law of the province in which the employee is usually employed. Thus, a federal employee employed in the province of Saskatchewan is paid compensation according to the scale of benefits payable under the Saskatchewan Act, and an employee in British Columbia according to the British Columbia scale of benefits.

The right to and the amount of compensation are determined, in accordance with the terms of the provincial law concerned, by the provincial Workmen's Compensation Boards which, by arrangement, handle the adjudication of claims under the federal Act as the agents of the federal Government. The boards pay compensation, medical, hospital and other expenses from deposit accounts maintained with them by the federal Government. The federal Government also pays a share of the total administrative costs in each province.

Federal Government employees are eligible for compensation under the Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. An employee who is disabled by a disease which is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he has been employed, and the dependants of an employee whose death is caused by such a disease, are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which he is usually employed.

An employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta. Claims of such employees are handled by the Alberta

Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in the province of Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the scale of benefits provided for in the Ontario Act.

"Employee" under the Act covers persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers or employees of any board, commission or corporation established to perform a function or duty on behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be "employees" for the purposes of the Act.

The officers and employees of a number of Crown companies, boards or agencies have been declared to be within the scope of the Act. These include, among others, Central Mortgage and Housing Corporation, the Canadian Broadcasting Corporation, Canadian Arsenals Limited, Atomic Energy of Canada Limited, Polymer Corporation Limited, Canadian Overseas Telecommunication Corporation, Canadian Commercial Corporation and the National Harbours Board.

The Minister of Labour has authority under the Act to promote accident prevention activities and safety programmes in the public service.

BLIND WORKMEN

In Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, there are special statutes, and in Quebec there are special provisions in the Workmen's Compensation Act dealing with compensation for blind workmen. In all these provinces, where compensation for an accident to a blind workman exceeds \$50, the Workmen's Compensation Board, or the employer if he is individually liable, is to be reimbursed from the Consolidated Revenue Fund of the province, in Ontario for the full amount of such compensation, and in the other eight provinces for the amount in excess of \$50, provided that at the time of the accident the workman was employed with the approval of an institute for the blind recognized by the Government of the province for that purpose.

WORKMEN'S COMPENSATION BOARDS

Each Workmen's Compensation Act is administered by a board of three members, five in Quebec, called the Workmen's Compensation Board, or in Quebec, Workmen's Compensation Commission, who are appointed by the Lieutenant-Governor in Council. In Saskatchewan, only the chairman is required to devote his full time to the work. In Alberta, British Columbia, Newfoundland, Ontario and Quebec, all members must devote the whole of their time to their duties under the Act and engage in no other employment.

No limit is set on the tenure of office of members of the Workmen's Compensation Boards except with respect to the chairman of the Saskatchewan Board whose term is limited to ten years, and the two members of the Manitoba Board other than the chairman who are appointed for a five-year term. In these cases

members are eligible for reappointment. The New Brunswick statute does not refer to the tenure of office of members of the Board. In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire at the age of 75, unless otherwise directed by the Lieutenant-Governor in Council. In Alberta, British Columbia and Newfoundland, they must retire on reaching the age of 70.

The industries within the scope of each Act except that of Newfoundland, New Brunswick and Prince Edward Island were classified by the Act according to accident hazard but, as a result of amendments in Nova Scotia and Ontario, classes formerly set out in the Act are now included in regulations of the Board. Subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Board may add to the classes or subdivide or rearrange them and may also add industries to or withdraw industries from such classes. The Newfoundland, New Brunswick and Prince Edward Island statutes provided that the classification of industries should be made in the first instance by the Board. The Boards have authority to fix assessment rates appropriate to each class with preferential or merit rating in favour of industries with good accident records. They may collect assessments, determine the right to compensation and pay the amount due to workmen or dependants. The provincial Accident Fund must be so maintained as to be sufficient to meet all claims as they arise. In all these matters, the Boards of Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction but the New Brunswick, Nova Scotia and Prince Edward Island Acts allow appeals to the Supreme Court of the province, with permission of a judge of that Court, upon questions of law or jurisdiction.

In case of dispute as to the payment of any assessment or other sum or of failure to pay such sums, any Board may file an order for payment with the clerk of the court specified in the Act, whereupon, as an order of the court, it may be enforced like any other judgment.

COST OF ADMINISTRATION

In each provincial Act it is stipulated that the salaries of Board members and the costs of administration are to be borne by the Accident Fund.

The British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Quebec Acts provide that an annual grant may be made to the Board from the Consolidated Revenue Fund to assist in defraying expenses of administration. In most provinces a grant was made by the Government in the early years of operation of the Acts to assist in organizing the work and meeting initial expenses, but no financial assistance is now given. Where, however, the Board is charged with other duties, the expenses in connection with them are paid by the province.

In proportion to the accidents to their own employees, however, the federal and provincial Governments contribute, like other employers who are individually liable, to the cost of administration.

In all provinces, the remuneration of Board members is determined by the Lieutenant-Governor in Council. In addition to the salary thus provided for, the Manitoba Act enables the Lieutenant-Governor in Council to authorize the payment to a Board member giving part-time service of an allowance of \$15 for each meeting of the Board in excess of fifty which he attends in any year.

SCOPE OF LAWS

The provincial Workmen's Compensation Acts vary in scope but, in general they all cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings, including lumbering, mining, quarrying, fishing, manufacturing, printing, engineering and construction, plumbing, painting, decorating and renovating, transport of passengers or freight by rail or water and transport of goods by road, operation of electric power lines, telegraph and telephone systems, waterworks and other public utilities, navigation and operation of boats, tugs and dredges, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards, scavenging and window-cleaning, dyeing and cleaning.

Theatres and places where moving-pictures are exhibited, automobile repair shops and service stations are within the scope of the Act in all provinces. Shops, hotels and restaurants are covered in all provinces except Quebec. Hospitals are within the scope of the Act in all provinces except Prince Edward Island; nursing homes are covered in British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan. Radio broadcasting stations are included in Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island. The operation of an office building or a building rented for manufacturing, retailing, wholesaling or warehousing is under the Ontario Act, and the maintenance or operation of commercial or apartment buildings is included in British Columbia, Newfoundland and Saskatchewan. Janitors and caretakers are covered by the Newfoundland, New Brunswick and Prince Edward Island Acts. Building caretaking and janitorial service as a business is covered in Ontario. Transport by air is expressly included in British Columbia, Manitoba, New Brunswick, Ontario and Prince Edward Island. In New Brunswick, however, the industry is only included if at least 10 workers are employed, and in Prince Edward Island, it is only included if 100 workers are employed. Transport by bus is included in all provinces but Nova Scotia and Quebec.

There are also variations with respect to other industries and occupations. In British Columbia, employers in practically all industries with the exception of farming are required to protect their workmen under the Act. Among the industries and occupations covered are wholesaling, ice-harvesting, marine salvage, messenger or delivery service, funeral undertaking, blacksmithing, the non-industrial construction of buildings having a value of \$2,500 or more, and the operation of such places as golf courses, parks, horse-race courses, ice and roller-rinks, bowling-alleys and billiard-parlours, dance-halls, steam baths and beer parlours. The other Acts cover a somewhat narrower range of industries and occupations but their field of application is widened from time to time by the addition of new industries and classes of workers. The scope of the Acts is also affected through the power given in all provinces but Alberta and British Columbia to exclude small establishments. (This power was removed in Quebec in 1963 by an amendment which is to come into force on proclamation). In a number of provinces some undertakings have been excluded unless more than a specified number of employees are employed.

Learners, that is, persons not under a contract of service or apprenticeship who become subject to the hazards of an industry under the Act while taking

training or doing probationary work before entering regular employment, are eligible for compensation in nine provinces. Provision is made in eight provinces for coverage of members of a municipal volunteer fire brigade. In some provinces coverage is compulsory, in others by application.

Municipal corporations and boards are deemed to be employers under all the Acts. As regards provincial Government employees, only those engaged in industries which are under the Act when carried on by a private employer are covered in some provinces, e.g., British Columbia and Quebec. In other provinces, e.g., Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan, all employees of the provincial Government are protected.

In every province, certain classes of workers are declared not to be within the scope of the collective liability system or of personal liability as provided for in Ontario and Quebec. Power is given to the Boards, however, to include industries or workmen not within its scope in the first instance on certain conditions. In all provinces, an industry may be brought under the Act by the Board on application of the employer. Workmen, otherwise excluded, may be declared by the Board to be within the statute in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan if the employer applies for such action. In British Columbia, industries may be admitted by the Board on application of the workmen. In Alberta, any establishment or industry may be admitted on the application of the workmen but with respect to casual workers and workers employed in the industry of farming or ranching, as indicated below, only if the employer consents. Of its own motion, the Board may bring industries within the Act in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Quebec. In Newfoundland, New Brunswick and Saskatchewan, this may be done by the Lieutenant-Governor in Council on the recommendation of the Board.

On the other hand, the Boards, except in British Columbia, have power to exclude any industry from the Act or, in the case of Manitoba, Newfoundland, New Brunswick, Nova Scotia and Ontario, from Part I. In Ontario, Quebec and Saskatchewan, such exclusion must be approved by the Lieutenant-Governor in Council. In Alberta, Newfoundland and Ontario, the Board may exclude any particular trade or occupation from an industry under the Act.

As indicated above, undertakings in which not more than a stated number of workmen are usually employed may be excluded by order of the Board in all the provinces except Alberta and British Columbia.¹ In Manitoba, Ontario and Quebec, no industries are excluded by number limit. On the other hand, the Nova Scotia Board has excluded all industries employing fewer than five persons, and the Newfoundland, New Brunswick and Prince Edward Island Boards those employing fewer than three persons. In addition to these general exclusions, regulations in Newfoundland, New Brunswick, Prince Edward Island and Saskatchewan exclude specific industries from coverage unless a stated number of workmen are usually employed. In Newfoundland, New Brunswick, Nova Scotia and Prince Edward

¹As stated on page 12, an amendment passed in Quebec in 1963, but not yet proclaimed in force, removes the power of the Commission to exclude small establishments. Regulations in Quebec excluding specific industries by number limit were repealed as of January 1, 1964.

Island, such undertakings may be readmitted by the Board, while in Manitoba and Ontario, if an employer or workman in an undertaking so excluded notifies the Board that he wishes to be included, the undertaking must be admitted. In Saskatchewan, an application by employer or workman in these cases must be approved by the Board.

FARM LABOURERS AND DOMESTIC SERVANTS

Certain classes of workers, although they are expressly excluded by some of the Acts, may, on certain conditions, be admitted. Among these are farm labourers, domestic servants, casual workers and outworkers.

In Manitoba, Newfoundland and Ontario, the collective liability system is declared not to apply to farm labourers or to domestic servants but the Acts expressly state that either group in Manitoba and Newfoundland and "the industry of farming" in Ontario may be brought under Part I (in Manitoba, within the application of the Act) on the employer's application. In Quebec, the industry of farming and domestic service are excluded and there is no provision for coverage by application.

The provisions in the New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers and domestic servants, or in Saskatchewan the industry of farming, ranching and domestic servants, are specifically excluded, along with certain other groups, but such exclusions are subject to a succeeding section of the Act which provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also subject to a further provision which permits an industry not within the scope of the Act to be brought under the Act by the Lieutenant-Governor in Council on the recommendation of the Board.

The Alberta Act applies only to specified industries; domestic service is not mentioned. As to farm workers, the statute provides that the industry of farming or ranching may be included by the Board on the application of the employer or of a majority of the employees with the employer's consent.

Farming is not among the industries specified in the British Columbia statute but, under the Board's general power to declare industries or undertakings within the Act on the application of either employer or workman, farm labourers may be brought within it. Domestic servants may apply for coverage under the elective provisions of the Act.

In practice, the Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Prince Edward Island Boards grant coverage to farm workers but the numbers covered in most of the provinces are comparatively few.

Hence, in all provinces, except to a limited extent, farm labourers and domestic servants, or their dependants, have recourse only to an action at common law for damages for accidents arising out of employment.

CASUAL WORKERS AND OUTWORKERS

Casual workers, employed otherwise than for the purpose of the employer's business, and outworkers or persons to whom work is given to be done at home, are outside the scope of the collective liability system in all provinces. In British

Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, these two classes may be brought within the scope of the Act under the conditions outlined on page 13. In Alberta, casual workers may be brought under the Act on application of the employer or of the majority of the workmen if the employer consents, but outworkers are declared outside the Act.

SEAMEN

The Merchant Seamen Compensation Act, 1946, provides for compensation to a disabled seaman or to dependants of a deceased seaman in case of an accident arising out of and in the course of employment. It applies to seamen, excluding pilots, apprenticed pilots and fishermen, employed on a ship of Canadian registry or on a ship chartered by demise to a person resident in Canada or having his principal place of business in Canada when such ship is engaged in trading on a "foreign" voyage or on a "home-trade" voyage as these voyages are defined in the Canada Shipping Act. The Act may be applied by the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada but operated by a resident of Canada or a person having his principal place of business in Canada.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and must cover his risk by insurance or other means satisfactory to the Merchant Seamen Compensation Board (composed of three officers of the public service), which administers the Act. Compensation, in accordance with the scale set out in the Act, is paid directly by the employer.

Compensation is not payable where a seaman or his dependants are eligible for compensation under a provincial workmen's compensation law or under the Government Employees Compensation Act, nor is compensation payable where an accident does not disable a seaman for a period of at least four days. Medical aid is provided, however, for short periods of injury.

Benefits under the Act were substantially increased in 1957. The rate of compensation for disability was raised from 66 $\frac{2}{3}$ to 75 per cent of average earnings, and the maximum yearly earnings to be taken into account for purposes of compensation were increased from \$3,600 to \$4,500. As a result of these two amendments, a seaman who is totally disabled may receive compensation at the rate of \$3,375 a year, assuming that his earnings are \$4,500 or more.

In a fatal case, a widow now receives, under the Act as amended, an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until remarriage. A monthly allowance of \$25 is paid for each dependent child under 18 years or \$35 for each orphan child. A maximum of \$200 is allowed for burial expenses, if they are not borne by the employer in accordance with the Canada Shipping Act, and up to \$125 for transportation and other expenses incurred in transferring the body to the place of interment.

Seamen are within the scope of the Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec Workmen's Compensation Acts, but in some provinces they have been excluded by regulation and in such cases may file claims for compensation under the federal Act. Most claims under the Act come from the four Atlantic provinces.

During the period for which duty is payable to the Sick Mariners' Fund under the Canada Shipping Act, and seamen are, therefore, eligible for medical aid under specified conditions, medical aid is not payable under the British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman, when for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (page 23).

RISKS COVERED

When in an employment within the scope of the provincial workmen's compensation system "personal injury by accident arising out of and in the course of the employment is caused to a workman", compensation is to be paid, including cash payments, medical and surgical aid and hospital and skilled nursing services. But no compensation is payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement. This wording of the Ontario Act is reproduced in the statutes of Prince Edward Island, Quebec and Saskatchewan and, with some slight variation, in Alberta. In Newfoundland and Nova Scotia, the law is similar but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent ("unless the injury results in death or serious and permanent disablement"). The British Columbia and Manitoba Acts have a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious or wilful misconduct and did not result in the death or serious and permanent disability of the workman.

The word "accident" is defined in most of the provincial statutes to include "a wilful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". The Alberta, British Columbia, New Brunswick and Ontario Acts refer to a "chance" rather than "fortuitous" event.

In several provinces the definition quoted above has been widened in recent years, making it possible for the Board to grant compensation for any disablement, including disablement resulting from an industrial disease, which can be shown to have been due to the nature of a workman's employment. The Alberta, British Columbia, New Brunswick, Ontario and Prince Edward Island Acts include in the definition the words "disablement arising out of and in the course of the employment", the Alberta, British Columbia and New Brunswick Acts adding a clause stating that where the disablement is caused by disease the date of the accident is to be deemed to be the date of the disablement.

"Accident", as redefined in the Manitoba Act in 1959, means a chance event occasioned by a physical or natural cause, but also includes (1) a wilful and intentional act that is not the act of the workman; and (2) any event arising out of,

and in the course of, employment or thing that is done and the doing of which arises out of, and in the course of, employment; and (3) conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease; and as a result of which a workman is disabled. The Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed to be the date of the accident.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable for injury by lightning, and the same three Acts and the Act of Saskatchewan expressly include frostbite resulting from a workman's employment. A special clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead in a place where his employment might cause him to be, it is to be presumed that his death was the result of an accident arising out of his employment, unless the evidence is sufficient to rebut the presumption. A similar provision in the Newfoundland and Nova Scotia Acts applies only to a workman found dead in the underground workings of a mine (in Nova Scotia, of a coal mine). The Nova Scotia provision was amended in 1959, deleting the words "at a place where the workman had a right in the course of his employment to be".

INDUSTRIAL DISEASES

The Acts of all provinces give a workman the right to compensation for industrial diseases, subject to certain conditions. The Acts vary in these conditions and in the interpretation which is placed upon the term "industrial disease".

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, when a workman is disabled or his death is caused by an industrial disease, he or his dependants are eligible for compensation as if the disease were a personal injury by accident, if the disease is due to the nature of the employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments.

In Ontario and Saskatchewan, compensation is payable if the disease is due to the nature of the employment in which the workman was engaged, whether under one or more employments, but there is no requirement that the workman must have been engaged in the employment within the twelve months preceding his disablement.

In Alberta, where a workman is disabled from a disease listed in the schedule, and at some time during the twelve months previous to the disablement was employed in a process set opposite the disease in the schedule, he is presumed to have contracted it from the nature of the employment, unless the contrary is proved.

No special conditions are laid down in the Manitoba Act for the payment of compensation for industrial diseases, since the definition of "accident" covers conditions giving rise to an industrial disease.

In all provinces but Alberta and Manitoba, compensation may not be paid if, at the time of entering into the employment, the workman wilfully and falsely

represented himself as not having previously suffered from the disease. In British Columbia, Ontario, Quebec and Saskatchewan, however, the workman is ineligible for compensation only if such false representation has been made in writing.

Under the Acts, as first enacted, the diseases for which compensation was payable were set out in a schedule, or, in New Brunswick, in regulations of the Board. The Boards were given authority to add to the schedule and in most provinces other diseases have been added to the original list. In New Brunswick, the Board was originally empowered to determine by regulation all the diseases to be compensated.

Under the system of schedule coverage, if a workman is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved. The statutory presumption that a disease is due to the nature of the scheduled employment is limited to the diseases and employments named in the schedule. Where a workman claims compensation for a disease which is not listed in a schedule, the burden of proving that it was caused by the nature of his employment rests with him.

In all the Acts except the Act of Manitoba the schedule of diseases is retained but wider coverage of industrial diseases is provided in a number of provinces either by reason of a broadened definition of "accident", as in Alberta, British Columbia, Manitoba and New Brunswick, or through the power given to the Board to award compensation in a particular case for any disease shown to be peculiar to or characteristic of an industrial process, trade or occupation.

In Alberta, British Columbia and New Brunswick, "accident" is defined to include disablement arising out of and in the course of the employment, and the definitions provide further that, where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement.

The definition of "accident" in the Manitoba Act includes conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease, and as a result of which a workman is disabled. That Act also provides that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed the date of the accident.

The British Columbia, New Brunswick, Ontario and Quebec Boards, besides being empowered to award compensation for any disease enumerated in the schedule or regulations, may regard any disease which is peculiar to or characteristic of a particular industrial process, trade or occupation as an industrial disease for purposes of the Act.

In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories and sanatoria. In Quebec, compensation is payable for any contagious disease contracted in employment in a hospital which can be shown to have been due to the nature of the employment.

In 1960 the Newfoundland Board was given authority, subject to the approval of the Lieutenant-Governor in Council, to appoint a committee of medical referees

consisting of three specialists to investigate, in relation to any claim for compensation, the nature of a disease named in the schedule and its relationship to any of the work processes listed opposite the disease in the schedule. The decision of such a committee is final and binding on the Board and the claimant as to the medical findings in the case.

The industrial diseases which are compensable under the provincial Acts are shown in a table beginning at page 34.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment to have a medical examination in order to determine whether he has an industrial disease, and, if he refuses or fails to do so, his employer may not continue to employ him.

In all provinces, compensation is payable for silicosis. The Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Acts contain special provisions setting out the conditions (such as residence qualifications, period of exposure to silica dust) upon which compensation may be granted. In Alberta, British Columbia, Newfoundland, Ontario, Quebec and Saskatchewan, silicosis is compensable when it occurs in a specific industry or industries; in the remaining provinces compensation is payable for silicosis occurring in any employment within the scope of the Act which involves the inhalation of silica dust.

WAITING PERIOD

Each Act provides for a "waiting period", the statutory minimum number of days during which a workman must be disabled from earning full wages in order to qualify for compensation. The waiting period under the Acts ranges from one to four days.

In Alberta, Manitoba, Newfoundland, Prince Edward Island and Saskatchewan, the waiting period is one day. No compensation is payable for the day on which an accident occurs, but if the worker is disabled for any longer time compensation is payable from and including the day after the accident.

The waiting period is three days in British Columbia, Ontario and Quebec; and four days in New Brunswick and Nova Scotia. Where a disability does not extend beyond the waiting period, the workman is not eligible for compensation. Where a disability continues beyond the waiting period, compensation is payable from the commencement of the disability.

The waiting period does not restrict the right of the workman to medical aid, which, under all the Acts, is given from the date of the accident.

MEDICAL AID

In addition to cash benefits, the cost of medical aid for injured workmen is borne by the Accident Fund for as long as needed under all the provincial Acts. In Quebec, employers who are individually liable for compensation must furnish satisfactory medical aid or they must be ordered to pay for such aid as is procured by the workmen or the Board; in Ontario, the amount must be paid by such employers through the Board.

In all provinces, medical aid includes medical, surgical, nursing and hospital services. In Ontario, it includes also treatment by persons registered under the Drugless Practitioners Act and the Chiropody Act, and in Alberta and Saskatchewan, the term includes treatment by any person licensed under provincial law to practise the healing arts. In Manitoba, the Board may permit treatment by a registered osteopath or chiropractor. The British Columbia Act permits treatment by "qualified practitioners", defined as persons registered under the Chiropody Act, the Chiropractic Act, the Dentistry Act and the Naturopathic Physicians Act. In New Brunswick, medical aid includes the services of a registered chiropractor within his legal jurisdiction.

In British Columbia and Manitoba, it is expressly provided that the Board has authority to provide transportation for an injured workman. In Alberta, Newfoundland, New Brunswick and Saskatchewan, the term "medical aid" includes transportation (in Saskatchewan, expenses of transportation and sustenance of the injured workman). The New Brunswick Act requires an employer to transport the workman to a hospital, physician or to the workman's home, the cost to be paid for by the Board from the Accident Fund. In the other nine provinces, the cost of such transport must be borne directly by the employer. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman.

The Boards of all provinces provide crutches, artificial limbs and other apparatus for injured workmen. Workmen are entitled to have such apparatus kept in repair or replaced as the Board deems necessary or, in Alberta, British Columbia and Manitoba, as long as disability continues. The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan provide not only for repair and renewal of artificial members or appliances in case of ordinary wear and tear but also for replacement and repair of members and appliances which are broken in an accident arising out of and in the course of employment, and the Ontario Act provides further that, where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident. The Manitoba and Saskatchewan Boards are authorized to pay an additional allowance to compensate an injured workman who wears a prosthetic device for the extra wear on his clothing caused by the use of such a device. The allowance payable by the Saskatchewan Board may not exceed \$96 a year in the case of a leg amputation and \$42 a year in the case of an arm amputation.

The Alberta, British Columbia, Manitoba and Quebec Acts specifically provide for medicines and in other provinces the cost of these may be included in the term "medical aid". In Alberta, British Columbia, Manitoba and Saskatchewan, the Board may replace and repair broken dentures, and in Newfoundland, Nova Scotia, Ontario and Prince Edward Island, the workman is entitled to such dental appliances and apparatus as may be necessary as a result of an accident and to have them kept in repair or replaced at the discretion of the Board. In New Brunswick, provision is made for dental aid. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, the Board may replace and repair eye-glasses broken by an accident arising out of

employment. With regard to broken dentures and eye-glasses, the British Columbia Board has authority to assume the expense of replacement and repair only "if such breakage is accompanied by objective signs of personal injury", and the Saskatchewan Board will do so "when breakage is occasioned by an accident in which the workman is injured sufficiently to require medical attention for which the board accepts responsibility". The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils which can be assumed to hinder an injured workman's recovery. In Alberta, Nova Scotia and Ontario, provision is made in permanent total disability cases for such other treatment, services or attendance as may be necessary as a result of the injury. In Nova Scotia, an allowance for attendance may not exceed \$20 a month.

The Board may make a per diem subsistence allowance from the Accident Fund in Alberta, British Columbia and Newfoundland to a workman under treatment at a place other than that in which he resides. In Alberta, the Board is authorized to pay \$8 a day for the first seven days of treatment, and \$6 a day thereafter if a workman is maintaining a home with one or more dependants elsewhere, or \$4.50 a day if a workman is not maintaining a home. No amount is specified in British Columbia and Newfoundland.

As regards the choice of a physician, in Alberta, British Columbia, Manitoba and Quebec, the Board is authorized to permit the workman to be treated by the physician of his own choice (in the British Columbia and Manitoba Acts, "the physician who may be selected or employed by the injured workman or his employer"). While the other Acts make no mention of choice of doctor, the usual practice is for the workman to be allowed to select his attending physician. Once a selection is made, however, he may not change doctors without the permission or approval of the Board.

Under several of the Acts, a workman, if so required by the Board, must submit to an examination by a medical referee chosen by the Board or to such other examination as the Board requires. In New Brunswick, when a matter is referred to a medical referee, the Board is required to supply the workman concerned with a list of certified specialists practising in the province in the field of the workman's condition, from which the workman must choose the specialist who is to act as medical referee. The workman must choose a specialist who, insofar as possible, is not an employer, director or officer in the industry in which he was injured or has not previously treated him or been consulted concerning his condition.

In Alberta, in cases of dispute, the Board, if requested by the workman in writing, must nominate not less than four recognized specialists in the class of injury or ailment for which compensation is claimed and the workman and his employer may each select one of them to conduct the examination. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are empowered to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board.

Similar provision for a medical appeal is made in British Columbia where a review of a workman's case may be requested by either the workman or his employer. Under the appeal procedure, the workman is examined by a Medical

Review Panel, consisting of a chairman appointed by the Lieutenant-Governor in Council and two other members, selected by the workman and employer, respectively, from a list of specialists drawn up by a Government-appointed medical committee. The decision of the panel is conclusive and binding upon the Board and is not open to court review.

In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a disputed medical question. The Workmen's Compensation Board is required to act upon the decisions of the review board, which are effective from the date on which the board was appointed.

A system of medical review in appeal cases is also provided for in the Saskatchewan Act. In that province a workman who requests a reconsideration of his claim on medical grounds may be examined by a specialist chosen by himself from a list of three specialists provided by the Board. After receiving the specialist's report, the Board is required to review the claim and notify the workman of its decision.

In Manitoba, an injured workman who feels aggrieved at a medical decision concerning his case has a right of appeal to a Medical Board of Reference, consisting of a chairman and deputy chairman appointed by the Manitoba Medical Association, one doctor named by the injured workman, one named by the employer, and one by the Workmen's Compensation Board from a panel of specialists furnished by the Medical Association. After reviewing the case and examining the workman, the Medical Board of Reference is required to report its findings to the Board.

In all provinces the fees for medical aid are fixed by the Board.

EMPLOYERS' SCHEMES FOR MEDICAL AID

Employers' schemes for medical aid to their workmen may, under all the statutes except those of Ontario and Saskatchewan, be continued or put into effect if, after considering the wishes of both workmen and employer, the Board deems them to be at least as favourable to the workmen as the provisions of the Act. Such a scheme, approved by the Board and under its supervision, may replace the arrangement for medical aid in the Act. In Manitoba and New Brunswick, no private schemes have been approved by the Board. The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts stipulate that the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate where such a scheme is in force. In British Columbia and Manitoba, the Acts state that employers' schemes for medical aid may be approved, subject to such conditions as the Board may impose. In Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, the Acts stipulate that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board.

MEDICAL AID FOR SEAMEN

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act,

provides for medical aid from the date of disability. The Act stipulates, however, that a seaman entitled to medical aid under the Canada Shipping Act is not entitled to medical aid under its provisions for the same period or to the same extent.

In British Columbia, Newfoundland, New Brunswick and Prince Edward Island, the Workmen's Compensation Act stipulates that seamen on vessels on which duty is payable for the purpose of the Sick Mariners' Fund under Part V of the Canada Shipping Act shall not, during the period for which such duty is payable, receive medical aid under the Workmen's Compensation Act. In British Columbia, however, seamen are eligible under the Workmen's Compensation Act for any additional medical aid which is not furnished under the Canada Shipping Act. Under that Act, all ships arriving at any port in British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island or Quebec are required to pay a duty for the Sick Mariners' Fund but ships engaged in the coastal trade and fishing vessels are exempt. A master of a fishing vessel may, however, elect to pay the duty whereupon medical treatment is available to members of the crew.

FIRST AID

In all provinces, employers in industries in which it is deemed proper may be required by the Board to maintain such first-aid appliances and service as the Board may direct. In British Columbia, when the employer fails to comply with this provision, the Board may install first-aid appliances and charge the cost of them to the employer. Regulations have been issued in most provinces setting out the minimum first-aid service required to be maintained according to the number of employees.

REHABILITATION

To aid in getting workmen back to work and in lessening any handicap resulting from their injuries, the Boards are authorized to adopt any means considered expedient and to pay the cost from the Accident Fund. In five provinces the maximum amount that may be spent for rehabilitation in a year is fixed in the statute: \$10,000 in Prince Edward Island; \$15,000 in Newfoundland; \$30,000 in Manitoba; \$50,000 in New Brunswick; and \$200,000 in Ontario. In addition, the Newfoundland Board is empowered to spend up to \$25,000 in a year for academic or vocational training for injured workmen. In the other provinces no limit is placed on annual expenditures for rehabilitation services. In Alberta, a reserve fund has been set aside since 1948 for the payment of expenses incurred by the Board in retraining and rehabilitation.

ACCIDENTS OCCURRING OUTSIDE THE PROVINCE

The Act in each province makes provision for compensation to workmen who are hired by an employer in the province and who are injured in accidents occurring outside its boundaries.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary in wording, in general they ensure protection to such workmen and guard against any overlapping.

In British Columbia, Ontario and Quebec, compensation is payable for an accident which occurs while a workman is employed outside the province if the employer has a place of business in the province and the residence and usual place of employment of the workman are in the province, and provided that the duration of employment outside the province has not exceeded the period specified. In British Columbia and Ontario, the employment must have lasted less than six months; in Quebec, it must not have exceeded 18 months. In Ontario, however, coverage may be extended beyond the six-month period on the application of the employer. The British Columbia and Quebec Acts stipulate that employment outside the province must be the direct continuation of employment in the province in the service of the same employer.

A further provision in the Ontario Act states that a workman is entitled to compensation for an accident which happens while he is outside the province "merely for some temporary purpose connected with his employment" even though his residence is outside the province, if his usual and principal place of business is in Ontario.

The Alberta Act provides that compensation is payable if the workman is a resident of the province or his usual place of employment is in the province, if the nature of the work is such that it is required to be performed both in and out of the province, and if the employment out of the province is a continuation of employment by the same employer in the province and has lasted less than 12 months (or longer if the Board permits.)

The Manitoba Act makes a workman eligible for compensation for an accident which occurs while he is temporarily engaged outside the province on the business of the employer, provided that his residence and usual place of employment are in the province, and the employer has an established place of business in the province.

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable if the workman's usual place of employment is in the province, if the accident happens while he is out of the province for some purpose connected with his employment in the province and if employment out of the province has lasted less than six months or, in the case of Newfoundland, less than eight months. In these three provinces and in Manitoba and Quebec, however, compensation is only payable in such cases if the workman or his dependants are not entitled to compensation under the law of the place where the accident happens.

There are, in addition to the above-noted provisions applying to any extra-provincial employment within the scope of the Acts, specific provisions in the British Columbia, Manitoba, Ontario and Quebec Acts which deal with accidents occurring outside the province in employment in connection with the transportation industry.

Compensation is payable in British Columbia, Manitoba and Ontario where an accident happens on a steamboat, ship or vessel, railway or aircraft, or (except in Manitoba) on a truck, bus or other vehicle used to transport freight or passengers, if the nature of the employment is such that it must be performed within and outside the province and, in Manitoba and Ontario, if the workman is a resident of the province or, in British Columbia, if a place of business of the employer and the residence and usual place of employment of the workman are in the province. In Manitoba, members of a fire brigade or other municipal employees are eligible for compensation under this section of the Act for an accident which occurs when their duties take them outside the province.

In Quebec, a workman resident in the province and employed in transport by land is entitled to compensation for an accident which occurs outside the province where he is required to perform his work both in and out of the province, and one resident or hired in the province and employed in transport by water is eligible for compensation where his work must be performed partly within and partly outside the province if the vessel on which he is employed is either registered in a Canadian port or if the owner or charterer has his home or principal place of business in the province. There is a further provision in the Ontario Act similar to the above, which entitles a workman resident in Ontario to compensation for an accident which happens out of Ontario on a ship or vessel if the ship is registered in Canada or the owner or charterer has his chief place of business in Ontario, whether or not the workman has been employed previously in Ontario and regardless of the duration of his employment out of Ontario.

The Prince Edward Island Act provides that before a workman is required to perform services outside the province an employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. This provision applies to the industry of "navigation" which is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having his place of business in the province, and to voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts make no specific mention of transportation but merely provide that, where a workman is engaged in work part of which is to be performed in the province and part in another province or country (in Saskatchewan, an adjoining province or country), the work is considered as done in the province and compensation is payable accordingly.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the workmen whose work requires them to go outside the province in the report of his payroll to the Board and an accident occurs to any workman outside the province for which he is entitled to compensation, the employer is individually liable to pay such compensation. The British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Boards, however, may exercise their discretion on this point according to the circumstances.

In Ontario, when the employer's place of business is not in the province, provision is made for the payment of compensation for accidents occurring outside the province under certain circumstances. If compensation is payable under the law of the place where the accident happened, compensation is not payable in Ontario whether the workmen is a resident of the province or not, unless his place of employment is in the province and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

In Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan, if an accident happening elsewhere than within the province entitles the workman to compensation under the law of the province, the Act requires him to choose under which law he will claim compensation and to give notice accordingly.

Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The Alberta, British Columbia, Newfoundland, New Brunswick, Ontario and Quebec Boards may make arrangements with the Board of any other province to avoid duplication of assessments and may repay the other Board for any payment of compensation made under such an arrangement.

In Saskatchewan, the Act enables the Board, with the approval of the Lieutenant-Governor in Council, to arrange with the Boards of adjoining provinces with respect to compensation for injuries to workmen whose employment is at one time or season in one province and at another time or season in another and also with respect to compensation for industrial diseases incurred by workmen whose employment extends across the interprovincial boundary. The Manitoba Act has a similar provision relating to industrial diseases.

NON-RESIDENT WORKMEN AND DEPENDANTS

The question of compensation to workmen or their dependants who reside outside the province or outside of Canada is dealt with in all the Acts. In most of the provinces such compensation is granted only on condition that similar benefits are provided for by the law of the country in which the beneficiaries reside. The higher standard of living in Canada compared with many other countries has also been taken into consideration and it is frequently stipulated that the amount of compensation may be adjusted on this basis.

The British Columbia law provides that, where compensation is payable to dependants residing outside of Canada, the Board may award them such lesser sum as, in its opinion, would at the date of death maintain them in a like degree of comfort as dependants of the same class in Canada. The Act further provides that any such dependant who subsequently becomes a resident of Canada is to receive compensation, for the period of his residence in Canada, according to the scale provided for a dependant resident in Canada at the time of the workman's death.

The New Brunswick Act contains a similar provision with respect to dependent aliens residing outside of Canada, authorizing the Board to pay such smaller sum

by way of compensation as, according to the conditions and costs of living in the place of residence, would maintain the dependants in a like degree of comfort as dependants of the same class residing in Canada.

In Quebec, dependants not residing in Canada may be awarded such sum in lieu of compensation as the Workmen's Compensation Commission deems proper.

A similar provision to that of Quebec is found in the Alberta, Ontario and Saskatchewan Acts. These statutes, however, while giving to the Board such discretionary power, stipulate, generally, that a dependant who does not live in Canada is not entitled to compensation, unless by the law of the place or country in which he resides, the dependants of a workman to whom an accident happens in that country, if resident in Canada, would be entitled to compensation.

In Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the section dealing with non-resident dependants is like that in Alberta, Ontario and Saskatchewan except that in the five first-named provinces the provision relates to dependants who do not live in the province as well as to non-residents of Canada, and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the clause is permissive only. The Board is given power to order compensation to be paid in such cases. In New Brunswick, the statute requires an order in council to set out that provision is made by other provinces and countries for compensation in respect to workmen of those countries or provinces and benefits are payable to dependants resident in New Brunswick. Such an order in council was approved in February, 1919.

In the three provinces, Manitoba, Ontario and Saskatchewan, compensation awarded to non-resident dependants may not be greater than the amount of compensation that would be payable under the law of the other country if the dependant concerned under the law resided in one of these provinces and in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board may reduce the compensation in such a case to that payable under the law of the country concerned.

SECURITY FOR PAYMENT OF COMPENSATION

Default on the part of the employer in making the required returns to the Board or in paying his assessment does not affect the payment of compensation for an accident occurring during the period of default. In such case, the employer is liable, in Alberta and Manitoba, in addition to a penalty, to pay one-half of the compensation payable, or in Alberta, not more than \$300 and in Manitoba, not more than \$500. In the other provinces except Prince Edward Island, the employer is required to pay the full amount or capitalized value of the compensation as the Board determines. The Prince Edward Island Act makes the employer liable, in addition to a penalty, to pay \$100 for each week of default.

In every province, where default is made in the payment of an assessment, judgment may be entered on a certificate filed in court by the Board. In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has right of action against the employer and in

Alberta, Ontario and Saskatchewan, if an assessment remains unpaid for 30 days the amount may be collected for the Board by the municipality in the same manner as taxes.

In Quebec, assessments have priority over any lien and in British Columbia and Alberta, over any lien except one for wages. In the other provinces, where an employer would be entitled to a lien the owner of the property is liable for the assessment or to a penalty if he fails to see that the employer pays it.

All the Acts provide that in the case of the death of the employer or of an assignment or winding-up of a company the amount of any assessment or compensation for which the employer was liable shall be included among the debts, such as legal costs, taxes or wages, which under the provincial statutes governing the distribution of estates in such cases, have priority over other claims against the property of the employer. The federal Bankruptcy Act also stipulates that all wages earned during the three months preceding the bankruptcy and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

ACCIDENT PREVENTION

The Board in each province, except Manitoba, and any person appointed by the Board have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether the safety appliances or safeguards required by law are being used. In Manitoba, the provincial Department of Labour is responsible for accident prevention work.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may determine the measures to be adopted or the safety devices to be installed for the prevention of accidents and diseases, making general or special rules for that purpose. Before adopting such rules, the British Columbia Board must arrange for them to be considered at a public hearing of which ten days' notice must be given, and the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected by the regulations. Safety regulations have been made by the Boards of Alberta, British Columbia, Newfoundland and Saskatchewan. The New Brunswick Board was given authority by a 1958 amendment to the Act to make regulations, subject to the approval of the Lieutenant-Governor in Council, for the prevention of accidents and the taking of safety measures in the industries of construction, demolition and excavation.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where, in the Board's opinion, conditions of immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures are taken.

In British Columbia, Newfoundland and Saskatchewan, the Board may maintain museums or places for the exhibition of safety devices, publish and distribute bulletins on accident prevention, arrange for lectures on the causes and prevention of industrial accidents and diseases, and appoint advisory committees on which employers and workmen are represented to assist the Board in establishing standards of safety and to recommend rules for that purpose. The Alberta Board has similar power to carry on education and instruction in accident prevention. An accident prevention committee must be organized in every plant in Alberta and Newfoundland employing 10 or more workmen, and in every plant in British Columbia with 20 or more employees.

In the Acts of Nova Scotia, Ontario and Quebec the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations, organized under the authority of the Act for that purpose. The associations operate on funds received from the Workmen's Compensation Board but all such funds are charged against the industries in the class or classes which the association represents. In Nova Scotia, one accident prevention association covers the province. In Ontario, employers in 17 of the classes of industry covered by the Act (representing practically all manufacturing except paper-making) are associated in one body, called the Industrial Accident Prevention Associations. Seven classes of industry, construction, pulp and paper, lumbering, mining, electrical work, transportation and highway construction, have separate associations. In Quebec, employers in pulp and paper, lumbering, metal mining and public utilities are organized in separate associations, and employers in other classes are associated in one body, the Industrial Accident Prevention Association.

The Newfoundland and Saskatchewan Acts, in addition to vesting wide authority for accident prevention in the Board, as noted above, provide for the setting up of accident prevention associations (associations of employers in Newfoundland, associations of employers and workmen in Saskatchewan). The Prince Edward Island Act also makes provision for the formation of associations of employers for accident prevention purposes. In Saskatchewan, accident prevention associations have been formed in a number of industries. In 1956 an industrial safety association was formed in Newfoundland to promote accident prevention in all industries under the Act.

Accident prevention associations have statutory authority to make rules for the prevention of accidents. The Newfoundland, Nova Scotia and Prince Edward Island Acts provide that, if the Board approves the rules, they become binding upon all employers in the class or classes, whether members of the association or not. In Ontario, Quebec and Saskatchewan, if the Board considers the association to be sufficiently representative of the employers (in Saskatchewan, employers and workmen) affected, and approves their rules, they become binding if they are approved also by the Lieutenant-Governor in Council. In practice, while associations may issue rules of safe work practices, they are not given binding force and there is no means of enforcing compliance with them. Most of the associations employ a staff of inspectors whose duties are to visit the industries in the membership, to advise on how to correct hazards, and to assist the employer to set up

machinery within his plant for the prevention of accidents. In addition to their plant survey and injury investigation activities, the work of associations extends to all forms of safety education and safety promotion. Where an association appoints safety inspectors, the Board may pay the whole or part of their salaries out of the Accident Fund but, as already indicated, moneys paid by the Boards for such purposes are charged to the classes represented by the association concerned.

In New Brunswick, the Industrial Safety Council, established in 1962 and consisting of two employer representatives, two labour representatives, the Deputy Minister of Labour and the Chairman of the Workmen's Compensation Board, is the agency responsible for initiating and carrying on a co-ordinated and comprehensive safety education program in the province. Funds for the operation of the Council are provided by the Workmen's Compensation Board. Statistical data furnished by the Board to the Industrial Safety Council provide detailed information on which safety education programs of the Council and inspection activities of the Department of Labour are based.

In Alberta, British Columbia and Prince Edward Island, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the directions of the Board, it may collect from the employer, in British Columbia, the amount of the compensation payable, not exceeding \$1,000 in any case, and in Alberta and Prince Edward Island, a sum not exceeding one-half of the amount of compensation payable.

In British Columbia and Manitoba, where an industry is so circumstanced or conducted that the hazard is either greater or less than the average of the class to which the industry belongs, the Board may fix a higher or lower rate according to the hazard. In New Brunswick, the rate may be increased where the hazard is greater than the average of the class owing to the manner in which the industry is carried on. In Alberta, the Board may reduce an employer's contribution to the Accident Fund where it is convinced that all proper precautions are being taken for the prevention of accidents and where the employer's accident record has been consistently good.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta, Ontario, Quebec and Saskatchewan, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate, or, in Alberta and Ontario, that first aid requirements have not been complied with, it may add to the employer's assessment such a percentage as it deems just or, in Quebec, it may exclude the industry from the class in which it is included and make the employer individually liable for compensation. In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised or, if the hazard is not removed, to be restrained from carrying on operations.

INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS¹

ACCIDENTS

The International Labour Conference at its 1925 Session adopted three Conventions and four Recommendations concerning workmen's compensation. The 1925 Convention (No. 18) concerning compensation for occupational diseases was revised in 1934 (No. 42) to cover additional diseases.

The Convention (No. 17) relating to industrial accidents requires that workmen's compensation laws shall apply to all workmen, employees and apprentices employed in a public or private undertaking with the exception, where deemed desirable by the Legislature, of casual workers employed otherwise than for the purposes of the employer's business, outworkers, members of the employer's family working exclusively for and residing with him, and non-manual workers whose remuneration exceeds a limit determined by national legislation.

The Convention does not apply to agriculture, which is covered by a 1921 Convention, nor to seamen or fishermen, nor to persons covered by special schemes whose terms are not less favourable than those of the Convention.

The Convention requires compensation, in fatal and permanent disability cases, to be paid periodically except where the authorities are satisfied that a lump sum will be properly used. Compensation must be payable from not later than the fifth day after the accident and additional compensation must be given where the injured person requires the constant help of another person. A workman is entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewing of artificial limbs and surgical appliances or to a money payment in place of them. Provision must be made to ensure the payment of compensation in the event of the employer or insurer becoming insolvent.

The Convention leaves each country free to determine whether compensation shall be payable directly by the employer or by an accident or sickness insurance institution.

The most outstanding differences between the Convention and the provincial Workmen's Compensation Acts are in scope. The Convention includes domestic servants which are nowhere included in Canada. It applies also to industrial undertakings irrespective of the number employed, to commercial establishments, such as shops, hotels, restaurants, places of amusement, banks and offices of various kinds, to hospitals and other institutions of a commercial or of a non-profit nature. The scope of the Canadian Acts is set out on page 12.

AGRICULTURE

Convention No. 12, adopted at the 1921 Session of the Conference, requires all agricultural wage-earners to be included within the scope of workmen's compensation.

In Canada, farm workers are not compensable except to a limited extent. However, in most provinces agricultural workers may be brought within the scope of the Act either by regulation of the Board or by Order in Council (page 14).

¹ In addition to the Conventions and Recommendations noted under this heading, the International Labour Conference has dealt with employment injury benefit in Part VI of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

OCCUPATIONAL DISEASES

The 1925 Convention provides for compensation for poisoning by lead or its alloys or compounds, poisoning by mercury or its amalgams and compounds, and for anthrax infection. This Convention requires compensation to be paid in case of death or disability from any of the specified diseases in accordance with the general principles of the legislation providing for compensation for industrial accidents and at rates not less than those prescribed for accidental injury. In addition to the three diseases specified above, the 1934 Convention applies to silicosis, poisoning by phosphorus or arsenic or their compounds, poisoning by benzene or its homologues and their nitro and amido-derivatives or by the halogen derivatives of hydro-carbons of the aliphatic series, pathological manifestations due to radium or other radio-active substances or to X-rays, and primary epitheliomatous cancer of the skin.

Only Ontario and Saskatchewan provide compensation for all these diseases. For the diseases compensable in each province, see page 34.

A Recommendation (No. 24) of the 1925 Conference is to the effect that each State should adopt a simple procedure for revising the list of diseases for which compensation is payable. In Canada, all provinces may add to the list by regulation of the Workmen's Compensation Board.

MINIMUM SCALE OF COMPENSATION

The Recommendation (No. 22) concerning the Minimum Scale of Workmen's Compensation proposes for permanent total incapacity a periodic payment equal to two-thirds of the workman's annual earnings and in case of temporary total incapacity a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation. In case of permanent or temporary partial incapacity, the benefit proposed is a proportion of the periodic payment due in the event of permanent or temporary total incapacity, respectively calculated in reference to the reduction in earning power.

Where periodic payments are made, the maximum yearly total paid to all dependants should not be less than two-thirds of the annual earnings of the deceased workman. Where compensation is paid in a lump sum, the maximum payable to all dependants should not be less than the capitalized value of periodic payments equivalent to two-thirds of the annual earnings.

The Recommendation further proposes that provision be made for the vocational re-education of injured workmen, and institutions which undertake such re-education should be encouraged by the Government.

Those entitled to be regarded as dependants under the Recommendation include at least the consort, children under 18 and invalid children over that age, dependent grandchildren and brothers and sisters within the same age limits, and dependent parents and grandparents.

In the Canadian provinces compensation is payable on the basis of seventy-five per cent of earnings but in all provinces a limit is placed on the maximum annual earnings which may be taken into account when calculating compensation. Further, compensation is normally paid only in respect of children under 16 except in New Brunswick and Quebec. In New Brunswick, benefits are paid until a child reaches

the age of 21 years or until he ceases to attend school regularly, whichever occurs first. In Quebec, compensation is paid, without any restrictions as to age, as long as a child is regularly attending school. If a child is not attending school, compensation ceases at the age of 18. Exceptions are made for invalid children in all provinces. In Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia and Ontario, compensation may be paid to the age of 18 to assist a child to continue his education. Payments for educational purposes may be continued to the age of 19 in Saskatchewan and to the age of 21 in Prince Edward Island.

EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS

The Convention (No. 19) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents requires each State which ratifies it to grant to the nationals of any other State which ratifies the Convention the same treatment in regard to compensation for accidents happening in its territory as it accords to its own nationals. This treatment is to be given to foreign workers and their dependants without any conditions as to residence. Special arrangements between the States concerned are to regulate, if necessary, the payments to be made outside the territory of any Member State. Agreements may be made between Member States providing that compensation for accidents happening to workers who are temporarily or intermittently employed in the territory of one Member, on behalf of an undertaking situated in the territory of another Member, shall be governed by the laws of the latter Member State.

The Canadian provisions relating to Equality of Treatment are stated on page 26.

The Recommendation (No. 25) on the same subject is to the effect that measures should be taken to facilitate the payment of compensation to foreign workers, and that in case of dispute concerning the non-payment or reduction of compensation due to a person residing elsewhere than in the territory where his claims originated, facilities should be afforded for taking legal proceedings in such territory without requiring the attendance of the persons concerned.

JURISDICTION IN DISPUTES

Recommendation No. 23 relates to jurisdiction in disputes concerning workmen's compensation. Since such disputes turn not only on the interpretation of laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions, it is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the courts should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

INDUSTRIAL DISEASES COMPENSATED BY PROVINCES

The following table shows the diseases for which compensation is payable under the Workmen's Compensation Acts by provinces but in British Columbia, Manitoba, New Brunswick, Ontario and Quebec any disease that is peculiar to an industrial process, trade or occupation may be compensated. In Alberta, British Columbia and New Brunswick, the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria. In Quebec, compensation is payable for any contagious disease contracted by a hospital employee which can be shown to have been due to the nature of his employment.

Aero 'otitis' media in any process in which rapid alteration in atmospheric pressure is encountered	British Columbia
Anthrax; Arsenic poisoning or its sequelae; Lead poisoning or its sequelae; Mercury poisoning or its sequelae; Phosphorus poisoning or its sequelae	All provinces
Ammonia poisoning or its sequelae	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Saskatchewan
Asbestosis	British Columbia, New Brunswick, Quebec
Asthma and respiratory irritations due to exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	British Columbia
Benzene (benzol) poisoning and poisoning by its homologues, nitro- and amino-derivatives, anilin and others	Alberta, British Columbia, Manitoba (munition making), Newfoundland, Ontario, Quebec, Saskatchewan
Beryllium poisoning in any process involving the use of beryllium or its compounds	Ontario
Bovine tuberculosis contracted from handling of animals or from laboratory work	Saskatchewan
Brass, zinc or nickel poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema in any process using oxy-acetylene or electric arc for cutting or welding	British Columbia
Bursitis (see also Cellulitis)	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
—acute, elbow	British Columbia, Newfoundland, New Brunswick, Nova Scotia
—prepatellar	British Columbia, New Brunswick
Cadmium poisoning	Ontario, Quebec, Saskatchewan
Cancer arising from the manufacture, handling or use of pitch or tar	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin or cornea due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any such substance	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carbon bisulphide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan
Carbon dioxide poisoning or its sequelae	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning or its sequelae	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan

Cellulitis, subcutaneous, hand	Alberta, British Columbia, Newfoundland, Nova Scotia
—, —, patella	British Columbia, Newfoundland, Nova Scotia
Chlorinated hydro-carbons (carbon tetrachloride, trichlorethyl- ene, tetrachlorethane, trichloronaphthalene and others) poisoning by or its sequelae	British Columbia, Ontario, Quebec Saskatchewan
Chlorine poisoning	Saskatchewan
Chrome poisoning	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis in any process using Circulatory disturbances of the extremities in any process involving muscular effort at low temperatures or handling cold materials	British Columbia
Compressed air illness	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec Saskatchewan
Conjunctivitis from exposure to dust from spices, dust, heat, gasses, fumes, vapours, mists or smoke	British Columbia
Conjunctivitis and/or retinitis due to electro- and oxyacetylene welding	British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Cyanide, dermatitis in any process involving the use of	British Columbia
Cyanide poisoning	Saskatchewan
Dermatitis	Quebec
Dermatitis and occupational ulcerations and infections of the skin	Manitoba
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours	Alberta
Dermatitis in any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manufacturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag- wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks, or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen	British Columbia
Dermatitis venenata in any process involving use of or contact with acids and alkalis or acids and oils or other irritants capable of causing it	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Formaldehyde poisoning	British Columbia, Saskatchewan
Frostbite	Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan
Gastric irritation in any process using oxyacetylene gas or electric arc for cutting or welding	British Columbia
Glanders	Alberta, New Brunswick, Saskatchewan
Heat exhaustion	British Columbia
Infection from handling sugar	New Brunswick

Infected blisters from any process involving continuous friction, rubbing or vibration	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Magnesium and its compounds, dermatitis in any process using	British Columbia
Metal-fume fever in any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper	British Columbia Saskatchewan
Miners' phthisis	Saskatchewan
Newcastle disease contracted from handling of poultry or from laboratory work	British Columbia
Nickel and its compounds, dermatitis in any process using	British Columbia, Manitoba (munition making), Newfound- land, Ontario, Quebec, Saskatchewan
Nitrous fumes, poisoning by, or its sequelae	
Petroleum and products, respiratory, gastro-intestinal, nerve and eye disorders due to	Saskatchewan
Pneumoconioses other than silicosis	Ontario
Pneumoconiosis	New Brunswick
Pneumoconiosis in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	Newfoundland
Pneumoconiosis in mining; and in quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal (in Quebec, also in smelting of metal and in potteries)	Alberta, Quebec, Saskatchewan
Pneumoconiosis in monument lettering and setting, stone dressing and cutting, sand-blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer-construction, road-construction, quarrying or tunnel- ing, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis-producing dust	British Columbia
Pneumoconiosis, coal miners', in coal mining	Nova Scotia
Poisoning in any process involving use of a volatile solvent (in assembling or repairing motor-vehicles, or in making paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending—Saskatchewan)	British Columbia, Saskatchewan
Poisoning in any process where there is exposure to methyl chloride	British Columbia
Poisoning caused by chemicals used in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever) from employment under Part I of the Act	British Columbia
Pulmonary and respiratory irritation from exposure to vapours, mists or dust	British Columbia
Respiratory disease due to inhalation of materials in non-offset sprays in printing industry	Ontario
Rhinitis from contact with allergens or chemical vapours or dust	British Columbia
Salmonellosis from employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act	British Columbia
Seal finger in handling seals or seal products	Newfoundland
Silicosis	New Brunswick, Prince Edward Island

Silicosis in mining	Newfoundland
Silicosis in any industry under Part I of the Act	Manitoba, Nova Scotia
Silicosis in mining, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (also smelting of metal—Quebec)	Alberta, Ontario, Quebec, Saskatchewan
Silicosis in steel-sharpening in metalliferous-mining; grinding, repairing or handling tools or machinery in mine operations; ore-crushing or rock-crushing; or any work in mining where there is exposure to silica dust	British Columbia
Silicosis in making pottery	Quebec
Staphylococcus aureus, infection by, from employment under Part I of the Act in same places of employment as for salmonellosis (see above)	British Columbia
Stone workers' or grinders' phthisis	Newfoundland, Ontario, Saskatchewan
Sulphur poisoning or its sequelae	New Brunswick, Prince Edward Island
Sulphur poisoning in coal mining	British Columbia
Sulphuric, hydrochloric or hydrofluoric acid, poisoning by	Saskatchewan
Tenosynovitis, tendonitis, inflammation affecting the sheaths and tendons (wrist only—Newfoundland and Saskatchewan)	British Columbia, Newfoundland, Nova Scotia, Ontario, Quebec, Saskatchewan
Tooth-erosion due to exposure to acid fumes or mist	British Columbia
Traumatic deafness in any industry where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear	British Columbia
Tuberculosis from employment under Part I of the Act in same places of employment as for salmonellosis	British Columbia
Tuberculosis contracted by a workman employed in a hospital, jail, sanatorium, convalescent home, nursing home, home for the aged, health unit or visiting nursing association to which Part I of the Act applies or in a laboratory, reform institution, health unit or treatment centre operated by the Province	Ontario
Ulceration of mucous membrane of the throat and nose due to exposure to acid fumes or mist	British Columbia
Undulant fever (brucellosis) contracted from handling of animals or carcasses or from laboratory work	British Columbia, New Brunswick, Prince Edward Island, Quebec, Saskatchewan
Vascular disturbances in the extremities due to continuous vibration of machines or power tools (in Saskatchewan, upper extremities)	British Columbia, Saskatchewan
Wool alcohol, poisoning by	British Columbia, Saskatchewan
X-rays, radium or other radio-active substances, any disease due to exposure to	British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan
—carcinoma or malignant disease arising from radiation	Newfoundland

SCALE OF COMPENSATION

The tables on the following pages show the benefits payable. Periodic payments may be commuted for a lump sum on certain conditions. In all provinces compensation is paid in respect of a foster-mother at the same rate as to a widow with one or more children for as long as payments to the children continue.

1. MONTHLY BENEFITS TO DEPENDANTS IN CASE OF DEATH OF WORKMAN

Funeral	Widow or Invalid Widower	CHILDREN		Where only dependants are other than consort and child	Maximum
		With Parent	Orphans		
\$3004	\$75 plus sum of \$200	Under 16, \$25 each ¹	NEWFOUNDLAND Under 16, \$35 each ¹	Sum reasonable and in proportion to pecuniary loss ²	75% of earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child, unless total benefits exceed \$150 ³
\$3004	\$65 plus sum of \$200	Under 16, \$20 each. ¹	PRINCE EDWARD ISLAND Under 16, \$30 each. ¹	As in Newfoundland. Maximum to parent or parents, \$40. Maximum in all, \$60 ²	75% of earnings, but Board may waive the 75% restriction where circumstances require it ³
\$2504	\$75 plus sum of \$150	Under 16, \$25 each ¹	NOVA SCOTIA Under 16, \$35 each ¹	As in Newfoundland. Maximum \$45 each. Maximum in all, \$60 ²	
\$3004	\$75 plus sum of \$200	Under 21, if attending school, \$25 each ¹	NEW BRUNSWICK Under 21, if attending school, \$50 each ¹	As in Newfoundland ²	75% of \$4,000 per year ³
\$6004	\$75 plus sum of \$300	Without age limit if attending school; otherwise, under 18; \$25 each ¹	QUEBEC Under 18, \$35 each ¹	As in Newfoundland ²	75% of earnings. Minimum \$100 to consort and one child; \$125 to consort and two children; \$150 to consort and more than two children ³
\$3004	\$75 plus sum of \$300	Under 16, \$40 each ¹	ONTARIO Under 16, \$50 each ¹	As in Newfoundland. Maximum \$100 ²	Average earnings. Minimum \$75 to consort, \$25 to each child or \$35 to orphan child unless total benefits exceed \$150 ³
\$2004	\$75 plus sum of \$300	Under 16, \$35 each ¹	MANITOBA Under 16, \$45 each ¹	Maximum to wholly dependent mother, \$75. Other dependants—as in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ²	75% of earnings. Minimum \$75 to consort; \$110 to consort and one child; \$145 if more ³

\$250 ⁴	\$110 plus sum of \$300 ⁵	SASKATCHEWAN		Average earnings. Minimum \$110 to consort; \$155 to consort and one child; \$200 to consort and two children and \$20 for each additional child ^{3,6}
		Under 16, \$45 each ¹	Under 16, \$60 each plus a sum not exceeding \$50 at the discretion of Board ¹	As in Newfoundland ²
\$250 ⁴	\$75 plus sum of \$200	Under 16, \$40 each ¹	ALBERTA Under 16, \$40 each plus an amount not exceeding \$25 to any child under 18 ¹	ALBERTA As in Newfoundland. Maximum to parent or parents, \$50. Maximum in all, \$85
		Under 16, \$35 each ¹ : if attending school, \$35 between 16 and 18 years	BRITISH COLUMBIA Under 18, \$40 each ¹ : \$37.50 if able to attend school between 16 and 18 years and not attending	(a) As in Newfoundland. Maximum \$90 to parent or parents. Maximum in all, \$90 (b) If there is widow or invalid widower or orphans, maximum to parent or parents, \$90 ²

¹Payments to children may be made up to 18 years in Alberta, Manitoba, Newfoundland, Nova Scotia and Ontario, up to 19 years in Saskatchewan, and up to 21 years in Prince Edward Island, if desirable to continue education. In Alberta, Newfoundland and Prince Edward Island, payments to invalid children are continued so long as Board considers workman would have contributed to support. In British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, payments are continued until recovery.

²Compensation in these cases is continued so long as Board considers workman would have contributed to support.

³For maximum earnings that may be reckoned, see Table 2, Column 5.

⁴For transporting body for burial, a maximum of \$150 in Quebec, of \$125 in Newfoundland and New Brunswick and of \$100 in Alberta, British Columbia, Nova Scotia and Prince Edward Island may be paid. No maximum is specified in Ontario and Saskatchewan. In Manitoba, the Board may pay transportation expenses within the province and part of expenses if the body is moved into or from the province. In Alberta and British Columbia, only transportation expenses within the province are allowed. In Alberta, Manitoba and Saskatchewan, compensation may include payment for a burial plot, not exceeding \$50.

⁵Monthly pension of \$75 after the age of 70.

⁶If consort is over 70, amounts are \$75, \$110 and \$145, respectively.

2. BENEFITS IN CASE OF DISABILITY

PERMANENT			TEMPORARY		Maximum Earnings Reckoned
Total	Partial		Total	Partial	
75% of earnings. Minimum \$65 per month or earnings, if less	NEWFOUNDLAND Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1, 2}	75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident, for duration of disability ^{1, 2}	\$4,000 per annum	
75% of earnings. Minimum \$20 per wk. or earnings, if less	PRINCE EDWARD ISLAND 75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1, 2, 3}	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on the nature of the injury for duration of disability ^{1, 2, 3}	\$5,000 per annum	
75% of earnings. Minimum \$110 per month or, if the workman has more than one child under 16, the amount which a widow with the same number of children would receive	NOVA SCOTIA 75% of difference in earnings before and after accident or compensation may be based on impaired earning capacity estimated from the nature of the injury. If disability 25% or more, average earnings must be taken as not less than \$18.75 per wk. ¹	75% of earnings for duration of disability. Minimum \$20 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1, 2}	\$4,200 per annum	
Average earnings but not in excess of 75% of \$4,000	NEW BRUNSWICK Amount determined by Board based on impaired earning capacity	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	If earning capacity diminished by more than 10%, 75% of diminution of earning capacity for duration of disability	\$4,000 per annum	
75% of earnings. Minimum \$25 per wk. or earnings, if less	QUEBEC 75% of difference in earnings before and after accident or, where possible, compensation may be based on impaired earning capacity estimated from the nature of the injury ^{1, 2}	75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{1, 2}	\$5,000 per annum	

75% of earnings. Minimum \$100 per month or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	ONTARIO 75% of earnings for duration of disability. Minimum \$15 per wk. or earnings, if less	75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$6,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or, where deemed just, compensation may be based on impaired earning capacity estimated from the nature of the injury ¹	MANITOBA 75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	75% of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ¹	\$5,000 per annum
75% of earnings. Minimum \$30 per wk.	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	SASKATCHEWAN 75% of earnings for duration of disability. Minimum \$30 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability ²	\$115.38 ^{1,3} per week (\$6,000 per annum)
75% of earnings. Minimum \$35 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury ¹	ALBERTA 75% of earnings for duration of disability. Minimum \$35 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability	\$5,000 per annum
75% of earnings. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident ^{1,2}	BRITISH COLUMBIA 75% of earnings for duration of disability. Minimum \$25 per wk. or earnings, if less	Proportion of 75% of earnings based on impaired earning capacity estimated from nature and degree of injury or, if more equitable, 75% of difference in earnings before and after accident for duration of disability ^{1,2}	\$5,000 per annum

¹If earning capacity is diminished 10% or less (5% or less in Alberta), a lump sum may be given.

²The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

³The Board may fix compensation on basis of \$15 per week, even though average earnings are less than \$15.

IN 26 1972

Changes in Provincial Workmen's

Compensation Laws in 1964

Six provinces amend Workmen's Compensation Acts, Manitoba and Quebec increase disability pensions for past accidents. Ontario removes age limit for payment of children's allowances

The Workmen's Compensation Acts of Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Quebec were amended. Of special importance, among the changes made, were the provisions in Manitoba and Quebec increasing disability pensions in respect of past accidents.

The Newfoundland Legislature increased from \$4,000 to \$5,000 the maximum yearly earnings on which compensation may be paid.

Manitoba and Ontario set higher minimum payments for total disability. In Ontario it was further provided that a permanently disabled workman who becomes entitled to payment for any temporary disability arising out of the original accident may be paid compensation based on his current earnings, if higher than his earnings at the time of the original accident.

In Ontario, the age limit for the payment of children's allowances was removed, and payments may now be made, at the Board's discretion, as long as a child is continuing his studies. Provision was also made in Ontario for a common law wife to receive benefits under conditions laid down in the Act.

Increased expenditures for rehabilitation services were authorized in Manitoba and Ontario.

The Nova Scotia Board was given discretionary authority to consider silicosis claims filed outside the five-year time limit prescribed by the Act.

Amendments in Ontario provide that accident prevention associations are to carry on the work of education in accident prevention, subject to the control of the Board.

The Quebec Workmen's Compensation Commission was empowered to establish a special fund, similar to the second injury funds of the other provinces.

Disability Benefits

In Manitoba, the minimum compensation payment for permanent total disability was raised from \$25 a week to \$150 a month (or average earnings, if less). The new minimum was made applicable to all accidents occurring after June 1, 1964. At the same

time, the Legislature provided that all disability awards in respect of injuries that had occurred before August 5, 1959 should be upgraded on the basis of the same minimum payment.

Provision was made for increases in past pension awards in accordance with the following formula:

1. Where a person was receiving compensation for permanent total disability immediately before June 1, 1964, his payment after that date could not be less than \$150 a month, subject to the limitation that the adjusted pension could not be more than 150 per cent of the compensation previously payable.

2. Where a person was receiving compensation for permanent partial disability immediately before June 1, 1964, his pension, as upgraded, could not be less than the percentage of \$150 a month corresponding to his degree of disability as determined by the Board, subject to the limitation that the adjusted pension could not be more than 150 per cent of the compensation previously payable.

The Quebec Legislature made provision for increases in all existing permanent total and permanent partial disability awards arising from accidents that happened in the period between September 1, 1931, when the Act first went into effect, and January 1, 1960. Beginning from September 30, 1964, all such payments are to be increased by a specified percentage, the percentage varying with the date of the accident.

The percentage to be added to present payments of compensation, varying with the period in which the accident occurred, is as follows:

from September 1, 1931 to July 1, 1947: 60%
from July 1, 1947 to February 1, 1952: 40%
from February 1, 1952 to January 1, 1955: 27%
from January 1, 1955 to January 1, 1960: 10%

The periods in respect of which different percentages apply correspond to the dates of successive changes in the ceiling on earnings, the ceiling having risen from \$2,000 to \$2,500 in 1947, to \$3,000 in 1952, to \$4,000 in 1955, and to the present \$5,000 figure on January 1, 1960.

The obligation to pay the increased amounts falls on the Accident Fund or the employer, as the case may be, in the same manner as with the original payment of compensation. The Explanatory Notes on the Bill stated that an actuarial study of the reserve fund had shown that the increases would not necessitate any additional assessment on employers who contribute to the Accident Fund.

In Newfoundland, the ceiling on earnings for compensation and assessment purposes was raised from \$4,000 to \$5,000 a year, effective from January 1, 1965. The ceiling remains \$4,000 in the case of accidents occurring between April 1, 1961 and January 1, 1965, and \$3,000 in the case of accidents that occurred before April 1, 1961, when the ceiling was last raised.

In Ontario also, higher minimum payments for total disability were put into effect. Increases were from \$15 to \$30 a week for temporary total disability, and from \$100 to \$130 a month for permanent total disability.

Another amendment in Ontario provided that a permanently disabled workman who becomes entitled to payment for any temporary disability, by reason of any matter arising out of his original accident, may be paid compensation based on his current earnings, if higher than his earnings at the time of the original accident.

The section of the Quebec Act that sets out the method of calculating the compensation payable in permanent partial disability cases was revised to conform with the practice followed by the Workmen's Compensation Commission; and reference to the wage-loss method of calculating compensation, which is no longer followed in the administration of Canadian workmen's compensation laws, was deleted.

As previously worded, this section provided for the payment of compensation on the basis of difference in earnings before and after the accident; but the Commission was authorized, where possible, to use the alternative method of awarding compensation on the basis of the physical impairment of the workman. The section, as revised, provides that a workman with a permanent partial disability is entitled to a weekly compensation payment for life in an amount established according to the degree of his disability, and calculated on 75 per cent of his average weekly earnings during the 12 months preceding his accident, or during any lesser period of service with his employer.

Death Benefits

In Manitoba, the maximum allowance for funeral expenses was raised from \$200 to \$300. Another amendment provided that the amount paid for a burial plot is to be excluded in calculating the maximum compensation payable in death cases, which, under the terms of the Act, is 75 per cent of the workman's average monthly earnings.

In Quebec, the increased funeral benefit of \$600 provided for in 1963 was made applicable to all deaths occurring after July 31, 1963. As enacted, this provision applied only to deaths resulting from accidents that happened after that date.

Provision was made in Ontario for a common law wife to receive benefits, at the discretion of the Board, if there is no dependent widow. A common law wife may be paid compensation if she had lived with the workman for the two years immediately preceding his death and had borne him one or more children or, if there are no children, if she had lived with the workman for the six years preceding his death.

As a result of another amendment in Ontario, payments may now be made, at the Board's discretion, in respect of a child for as long as he is continuing his studies. Previously, payment of benefits could be continued only to the end of the school year in which a child reached the age of 18.

The section of the Newfoundland Act that limits the total monthly compensation to dependants to 75 per cent of the workman's average earnings was amended, providing further protection for the family of the low-paid wage-earner. The Act provides that where the total monthly compensation exceeds 75 per cent of the workman's earnings it is to be reduced to that percentage; but that pensions of \$75 to a widow, \$25 to a child and \$35 to an orphan child are to be paid, without reduction, up to a total of \$150 or less. The amendment provides, in addition, that where benefits at the above rates total more than \$150 they may not be reduced below \$150.

Medical Aid

The Newfoundland Board was authorized to pay a clothing allowance not exceeding \$100 a year to enable a workman to have clothing that is damaged or worn by the use of an artificial member or other apparatus kept in repair or replaced. This amendment will go into force on January 1, 1965. Two other provinces—Manitoba and Saskatchewan—provide for a clothing allowance.

The section of the Prince Edward Island Act setting out the right of an injured workman to medical aid was amended to replace the words "artificial members and apparatus" with the words "prosthetic appliances." The section now states in part that "every such workman shall be entitled to such prosthetic appliances . . . as may be necessary as a result of any accident."

The Nova Scotia provision that enables the Board to reopen and review any claim was amended to authorize the Board to review any finding or decision of a medical review board made between April 12, 1957 and April 13, 1962. (Provision was made in the Act on August 12, 1957 for a medical review board, and an amendment of April 13, 1962 provided that the findings of such a board were to be effective from the date on which the board was appointed.)

Another Nova Scotia amendment empowers the Minister of Labour, upon an application for a medical review board, to refer the matter to a medical referee, if it has not been previously referred to a referee. The report of the referee is to be submitted to the Workmen's Compensation Board. Under the former provision, the same matter could not be dealt with by both a referee and a medical review board.

In Quebec, doctors, hospital officials and medical experts who examine or care for injured workmen are now required to submit their first reports containing their findings, treatments and recommendations within six days. Later reports are to be furnished as required.

Silicosis Claims

The Nova Scotia Board was given discretionary power, upon the written application of the workman, to reconsider a claim for compensation for silicosis that it had previously rejected because it was not filed within the prescribed five-year period following termination of employment, or to consider a new claim made after the expiration of the five-year period.

Rehabilitation

Amendments in Manitoba and Ontario will enable the Boards to increase their expenditures for rehabilitation services. In Manitoba, the ceiling of \$30,000 on the amount which the Board may spend in a year on vocational training was removed, and in Ontario the Board was empowered to spend such amount over and above the former \$200,000 ceiling as might be authorized by the Lieutenant-Governor in Council.

Accident Prevention

Accident prevention associations (associations of employers) in Ontario were brought under the control of the Board, and the Act was further amended to state that the purpose or function of such associations is "education in accident prevention."

The Quebec Act was also amended to require an accident prevention association (as in Ontario, composed exclusively of employers) to be representative of workmen as well as employers, if it wishes to have its rules made binding by the Lieutenant-Governor in Council.

Special Fund

The Quebec Commission was empowered to establish a special fund (like the second injury funds in other provinces) to help defray the costs and compensation arising by reason of an accident to a workman handicapped by reason of a previous accident, a congenital infirmity or a pathological condition. The Commission was authorized to add a percentage or additional sum to the assessment of any or all classes of industry in Schedule I in order to establish this special fund.

Coverage

An amendment to the Quebec Act removed a restriction that formerly applied with respect to the coverage of employees of the Provincial Government, municipal and school corporations and other public bodies. Previously, these employees were covered only if they were engaged in employment that would be within the scope of the Act if carried on by a private employer. All such employees are now covered. These public bodies are included in Schedule II of the Act, which sets out the industries in which employers are individually liable for the payment of compensation.

Administrative Provisions

As a means of promoting safer working practices in industry, the Ontario Board was authorized to adopt a demerit system whereby an employer's assessment would be increased if his accident record was consistently higher than the average for the industry. Details of a demerit system would be laid down in regulations. A merit rating system under which employers with a favourable accident record have their assessments reduced is already provided for in the Act.

A Quebec amendment provided that any agreement between an employer who is individually liable for the payment of compensation and the workman or his depend-

ants with regard to compensation must be approved by the Commission. A provision permitting an exception to this rule in the case to temporary disability lasting for less than four weeks was deleted.

Under another Quebec amendment, the Commission is authorized to deduct from a workman's periodic compensation payments the equivalent of any advance payment made to the workman by a welfare or insurance service during his period of disability and to refund the amount to the service concerned.

A further Quebec amendment gives the Commission express authority to add to Schedule I (industries in which employers are required to contribute to the Accident Fund) an industry mentioned in Schedule II (industries in which employers are individually liable to pay compensation).

The Nova Scotia Board was authorized to establish and maintain a branch office, with a medical officer, at or near Sydney. This provision is to go into force on proclamation.

Fishermen—Individual Liability

An amendment was made to the Workmen's Compensation Act, No. 30 of 1948, of Newfoundland providing for increased benefits to members of the crew of a fishing vessel. This Act, the predecessor of the present Workmen's Compensation Act, remains in effect only with respect to deep-sea fishermen and renders the employer individually liable for the payment of compensation.

The Act provides that members of the crew of a fishing ship registered in Newfoundland or operated by an employer residing in or having his principal place of business in the province are to be deemed workmen within the meaning of the Act, notwithstanding that they are paid wholly or mainly by shares in the profits or gross earnings of the ship. The amendment, effective from January 1, 1965, increases the ceiling on the earnings or average earnings of any such fisherman from \$700 to \$2,000 a year.

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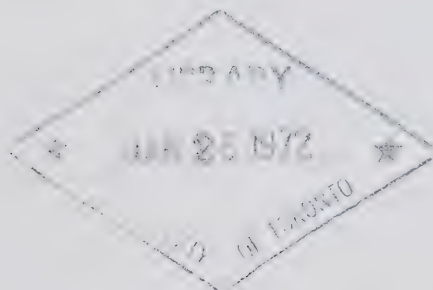
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CANADA

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Publications

Changes in 1966 in Provincial Workmen's Compensation Laws



LEGISLATION BRANCH
CANADA DEPARTMENT OF LABOUR

CHANGES IN 1966 IN PROVINCIAL WORKMEN'S COMPENSATION LAWS

In 1966, changes involving increased benefits were made in the workmen's compensation laws of Manitoba, Nova Scotia and Prince Edward Island. The Newfoundland Act was also amended to make minor administrative changes.

Disability Benefits

In Nova Scotia, the ceiling on annual earnings for compensation and assessment purposes was raised from \$4,200 to \$5,000. The amendment was effective for claims purposes from May 1, 1966 and for assessment purposes from January 1, 1966. The limits placed on annual earnings under the provincial Acts are now \$5,000 in five provinces, \$5,600 in one, \$6,000 in three others, and \$6,600 in one.

Minimum payments of compensation for temporary total disability and permanent total disability were increased, the former from \$20 to \$30 a week, or average earnings, if less, and the latter from \$110 to \$125 a month. The increase in the minimum award for permanent total disability was made applicable from July 1, 1966 to both existing and new pensions.

The Nova Scotia Legislature also set higher minimum average earnings for purposes of calculating permanent partial disability awards. The Act was amended to state that average earnings for purposes of computing the compensation payable for permanent partial disability—where disability has been determined by the Workmen's Compensation Board to be 15 per cent or more of the workman's earning capacity—are to be deemed to be not less than \$160 a month. Under the previous provision, in cases where disability was 25 per cent or more, average earnings for purposes of calculating permanent partial disability awards were to be deemed to be not less than \$18.75 a week. This amendment was also made applicable

from July 1, 1966 to existing as well as future pensions.

As a result of an amendment in Manitoba, benefits payable to a workman suffering from a recurrence of a disability caused by an earlier compensable accident are to be based on his current earnings if they are higher than his average earnings at the time of the original injury.

The new provision states that, if the workman is not receiving a permanent disability pension for the original injury, disability benefits for its recurrence are to be based on his average earnings at the time of recurrence.

If the workman is receiving a permanent disability pension, the additional benefits payable are to be based on the percentage of disability not covered by the pension, and are to be calculated on the basis of his average earnings at the time of recurrence, and according to the current scale of benefits.

The amendment provides further that, if at the time of the recurrence the workman is in the employment of an employer in a class different from the class to which his employer at the time of the original injury belonged, the Board is to allocate the costs of the recurrent disability in a manner it considers equitable in the circumstances.

Death Benefits

The monthly pension to a widow or invalid widower was increased from \$65 to \$75 in Prince Edward Island, and from \$75 to \$100 in Manitoba. In Manitoba, the same increase was authorized in the allowance payable to a wholly dependent mother of a deceased workman.

In line with the increase in the widow's pension, appropriate changes were made in the clause providing that total compensation to dependants in fatal

cases may not exceed 75 per cent of the workman's average monthly earnings, subject to the payment of certain minimum amounts to consort and children. The minimum amounts now payable are \$100 to a widow or invalid widower, \$135 to a widow or invalid widower and one child, and \$170 to a widow or invalid widower and two or more children.

A definition of "child" was inserted in the Manitoba Act, thereby making it possible to pay benefits to illegitimate children and children dependent on a workman, even though they are not his formal wards. "Child" is defined, as in the Alberta Act, to include a child of a child, and the child of a husband or wife by a former marriage, and an illegitimate child, as well as any other child to whom the workman stood *in loco parentis*.

The increased benefits to dependants in Manitoba were made applicable to all such persons in receipt of compensation on April 27, 1966 irrespective of the date of the accident.

Medical Aid

The "helplessness allowance" provided for in Nova Scotia in 1961, and payable at the discretion of the Board if a workman requires attendance because of permanent total disability, was increased from not more than \$20 to not more than \$40 a month.

Accidents Outside the Province

The Manitoba Act was amended to provide for payment of compensation for accidents occurring outside the province to workmen resident in Manitoba, and employed in connection with the operation of a vehicle engaged in inter-

provincial trucking or bus transportation. The Act stipulates that compensation may be paid in such circumstances, if the workman elects to claim under the Manitoba Act.

The Manitoba Board was authorized to enter into an agreement with the Workmen's Compensation Board of any other province or territory of Canada to avoid duplication of assessments on employers, and to provide for the payment of compensation to workmen for injury sustained while engaged in extra-provincial employment covered by the Act (employment in connection with the operation of a ship, railway, aircraft, truck or bus, and employment of members of a fire brigade or other municipal employees whose services must be performed both inside and outside the province).

Other Provisions

In Manitoba, the provision enabling the Board to divert compensation payable to a workman who is not supporting his wife and children to the wife or children was amended to give the Board further authority to divert the compensation in whole or in part to the municipality that is partially or wholly supporting the wife or family of the workman.

An amendment to the Newfoundland Act provided for the compulsory retirement of Board members at the age of 65 instead of 70, except where the Lieutenant-Governor in Council directs otherwise. Provision was also made for the designation of the vice-chairman of the Board by the Lieutenant-Governor in Council. Previously, the Act stated that the vice-chairman was to be elected by the commissioners from their number. These amendments are to go into force on proclamation.

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Reprinted from October 1966 issue of the Labour Gazette



WORKMEN'S COMPENSATION IN CANADA

Legislation Branch
CANADA DEPARTMENT OF LABOUR

WORKMEN'S COMPENSATION IN CANADA

**Legislation Branch,
Canada Department of Labour**

Hon. Bryce Mackasey,
Minister

J. D. Love,
Deputy Minister

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Price: \$1.00

Catalogue No. L34-1969

Price subject to change without notice

The Queen's Printer
Ottawa, Canada
1969

Foreword

This study, a complete revision of its predecessor *Workmen's Compensation in Canada: A Comparison of Provincial Laws*, which was issued annually by the Department of Labour for many years, deals with the whole area of compensation for employment injury. It attempts to give a well-rounded picture of the Canadian workmen's compensation system and to show that it embodies concepts of accident prevention and the rehabilitation of the injured workman as well as "compensation" in the form of cash and medical benefits for injuries sustained in employment.

The author discusses the basic principles underlying the system: the principle of liability without fault and payment of compensation benefits in substitution for the right of action for damages; collective liability of employers and compulsory insurance in an exclusive, non-profit, state fund; exclusion of the courts from workmen's compensation cases and administration by a board whose procedures are kept as simple, speedy and inexpensive as possible; and the continuing jurisdiction of the board to review and modify any decision based on new evidence or changed conditions.

The coverage of the Acts and the nature and extent of the benefits furnished are treated in some detail. One chapter is devoted to describing the steps which have been taken to upgrade pensions awarded in past years at a time when lower earnings and compensation rates prevailed.

Scales of cash benefits provided and the scheduled occupational diseases for which compensation is payable are set out in tables, permitting comparisons between provinces. A discussion of the standards laid down by the International Labour Conference in the field of workmen's compensation is included.

The study describes the laws as they were on December 31, 1967. The revision of workmen's compensation laws is a continuing process and the reader is reminded that changes have been made since this volume was sent to the printer. The Legislation Branch publishes yearly information on changes in workmen's compensation laws, which is available on request.

The study was done by Miss Evelyn Woolner, Chief of the Legislative Research Division of the Legislative Branch.

Edith Lorentsen,
Director,
Legislation Branch.

The Legislation Branch intends to issue an annual supplement describing changes in federal and provincial workmen's compensation legislation. The first such supplement, covering the year 1968, is included with this publication.

CONTENTS

	Page
INTRODUCTION. Canada's Workmen's Compensation System	1
Review of Acts	2
Historical Background	2
Legislative Jurisdiction	4
CHAPTER I. Entitlement to Compensation	5
Risks Covered	6
Exceptions	6
Waiting Period	6
CHAPTER II. Benefits Under Workmen's Compensaiton Laws	8
Disability Benefits	00
Temporary Total Disability	8
Temporary Partial Disability	8
Permanent Total Disability.	9
Permanent Partial Disability	9
Ceiling on Annual Earnings.	10
Computation of Average Earnings	11
Compensation to Workmen under 21	14
Death Benefits.	14
Common Law Wife	15
Determination of Amount of Widow's Pension	16
Suspension or Withholding of Benefits	16
CHAPTER III. Upgrading of Pensions	18
Steps to Increase Past Awards.	18
New Approach to Pension Increases in British Columbia	20
Retroactive Increases in the Minimum for Total Disability	21
Recurrence of Disability.	22
Benefit Changes Since Inception of Acts in Three Provinces	23
CHAPTER IV. Medical Aid	26
Medical Examination	27
Medical Reviews	27
Employer's Schemes for Medical Aid	28
Medical Aid for Seamen.	29
CHAPTER V. First Aid and Rehabilitation	30
First Aid.	
Rehabilitation	
CHAPTER VI. Industrial Diseases	33
Conditions of Entitlement to Compensation	34
Occupational (Noise-Induced) Deafness	34
Heart and Lung Injury due to Fire-fighting	35
Radiation Disabilities	35
Compressed Air Illness	36
Silicosis and Other Dust Diseases.	36
Conditions upon which Compensation is Payable	39
Preventive Measures	40
Medical Examinations	40
Silicosis Referee	42
Silicosis Funds	43
CHAPTER VII. Coverage and Scope of Laws	44
Compulsory Coverage of Selected Industries	45
Numerical Exemptions	46
Public Employees	47
Federal Government Employees	47
Provincial Government Employees	47
Municipal Government Employees	48

Farm Workers	48
" " Ontario	50
" " Other Provinces	50
Fishermen	50
Seamen	51
Coverage by Provincial Acts	51
Merchant Seamen Compensation Act	51
Learners	52
Apprentices and Trainees	53
Persons Engaged in Rescue Work	53
Work outside Scope of Workmen's Regular Employment	53
Casual Workers	53
Homeworkers	53
Domestic Servants	54
Independent Operators	54
Employers	54
Executive Officers or Directors of Corporations	54
Members of the Employer's Family	55
Compensation to Blind Workmen	55
CHAPTER VIII. Workmen's Compensation Boards.	56
CHAPTER IX. Reporting Procedures and Claim Review	60
Reporting of Accidents	60
Time Limits for Filing Claims	61
Review of Claims	61
Compensation Counsellor	62
CHAPTER X. Individual Liability	63
Ontario and Quebec — Industries in Schedule 2	63
Nova Scotia — Fishing and Dredging	63
Federal Merchant Seamen Compensation Act	64
Ordinances of the Yukon and Northwest Territories	64
Part II of Acts	66
CHAPTER XI. Third Party Actions	67
CHAPTER XII. Accident Prevention and Safety Inspection	70
Boards Directly Responsible for Accident Prevention	70
Employers' Safety Associations	72
New Brunswick Industrial Safety Council	73
Safety Committees	73
Penalty Assessments for Unsatisfactory Safety Performance	74
Financial Incentive for Accident Prevention	75
Merit Rating	75
CHAPTER XIII. Accidents Occurring Outside the Province	77
Reciprocal Agreements	78
CHAPTER XIV. Duties of Employers	81
Contractors and Subcontractors — Liability for Assessments	83
CHAPTER XV. System of Financing Workmen's Compensation	85
Reserve Funds	86
Second Injury Funds	86
Collection of Unpaid Assessments	87
CHAPTER XVI. International Labour Conventions and Recommendations	89
Pre-War Conventions and Recommendations	89
Post-War Convention Concerning Minimum Standards of Social Security	90
Convention No. 118	91
Recommendation No. 121	92
Equality of Treatment of National and Foreign Workers in Social Security	93
Extent of Compliance of Canadian Laws with Convention No. 121	93

APPENDICES

1. Industrial Diseases Compensated by Provinces (Scheduled Diseases)	95
2. Benefits Payable to Dependants in Case of Death of Workman	105
Funeral Benefits and Lump Sum to Widow	105
Monthly Benefits	106
3. Benefits in Case of Disability	108
4. Titles and Citations of Acts and Ordinances	110

INTRODUCTION

Canada's Workmen's Compensation System

Compensation for employment injury, referred to in Canada as workmen's compensation, is provided for by a law in each province. There are also two federal compensation Acts governing federal government employees and merchant seamen, respectively, and there are workmen's compensation Ordinances in the Yukon and Northwest Territories. The federal Acts and territorial Ordinances are discussed separately. The general description which follows has to do with the provincial Acts.

The qualifying condition for entitlement to workmen's compensation benefits is employment in an industry within the scope of the Act at the time of the injury. The laws list the industries covered.

The provincial Acts provide that a workman in a covered industry who sustains personal injury by accident "arising out of and in the course of employment" is entitled to compensation. When an accident "arising out of and in the course of employment" results in a workman's death, compensation is payable to his dependants. When disability or death is caused by an industrial disease that is due to the nature of the employment, the disease is treated as the happening of an accident.

The only conditions under which compensation is not payable are: (1) where the workman is disabled for less than a stated number of days (see "Waiting Period", p. 6); or (2) where the injury is attributable solely to his serious and wilful misconduct and does not result in death or serious disablement.

Free medical aid and physical and vocational rehabilitation services are also furnished to an injured workman under the Workmen's Compensation Act of each province.

All employees of an undertaking to which the Act applies, whether doing manual labour or not, and whether employed full-time or part-time, are covered as "workmen" under the Act. "Workman" is defined as a person who has entered into a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise.

"Accident" is defined in the Acts of most provinces in wide enough terms to cover any disablement (including disease) which can be shown to have arisen out of and in the course of employment.

Compensation is payable as a matter of right, regardless of negligence on the part of the employer, the workman or his fellow employee. The employee's right to compensation is not affected either by default on the part of the employer in providing information or paying his assessment or by the employer's insolvency. The employer's refusal or failure to furnish payroll returns or to pay assessments may, however, render him liable to penalties.

A workman who is entitled to compensation may not take action against his employer in the courts for an injury sustained in the course of employment, since the right to benefits under the Act was substituted for the workman's right to sue the employer for damages.

The Canadian workmen's compensation system is based on two main principles: collective liability on the part of employers and compulsory insurance in a state fund, known as the Accident Fund. It is, in effect, a mutual insurance scheme in which the employers in a class of industry are jointly or collectively liable for the cost of all accidents occurring in that class.

In each province coverage is compulsory for all employment within the scope of the law. All costs of compensation are borne by employers. Neither the employee nor the Government makes any contribution to the Accident Fund. For an employer to require any contribution from employees is an offence against the Act. The costs of compensation are regarded by employers as a direct cost of production and passed on to the consumer. Thus, in the final analysis, the costs of compensating workmen for employment injury are borne by society as a whole as a proportion of the price of the goods and services purchased.

Another significant feature of the Canadian workmen's compensation system is that each law is administered by a virtually autonomous board—the Workmen's Compensation Board (in Quebec, the Workmen's Compensation Commission)—with full and final authority to determine all matters arising in the administration of the Act. Except for the four Atlantic provinces (in which appeals are permitted), in three provinces on points of law or the Board's jurisdiction), there is no appeal to the courts from the Board's decisions. There being no litigation, the injured workman receives benefits under the Act with a minimum of delay and expense. Because of the determination of claims by a board instead of the courts, the system has been referred to as a "clinical" rather than an "adversary" system (employee opposing employer), such as is in effect in many states of the United States.

Benefits for disability are based on 75 per cent of average weekly earnings, subject to an annual ceiling. Payments continue for the duration of the disability and are not subject to a statutory monetary limit. When there is permanent disability, a life pension is paid, irrespective of future earnings. Medical and hospital benefits are provided without limitation, regardless of a waiting period. In case of death, compensation to dependants is a fixed monthly amount not tied to wages.

In one province, British Columbia, pensions to widows and dependent children and permanently disabled workmen and the minimum compensation for dis-

ability are tied to the cost of living, and are increased 2 per cent annually for each 2 per cent rise in the consumer price index.

All employer contributions are paid into the Accident Fund and all expenditures under the Act are met from the Fund.

All costs of compensation are raised by assessment on employers, levied by the Board. Industries covered by the Act are divided into classes or groups according to hazard, and the Board fixes an annual assessment rate appropriate to each class or group. The prescribed rate is applied to the employer's payroll. Assessment rates reflect the accident experience of the group or class.

Each class is liable for the cost of accidents occurring in that class. Separate accounts must be kept of the amounts collected and expended in each class. Benefits are payable, however, from a single fund, regardless of the industry in which the claim arose, or, in the words of the Acts, "for the purpose of paying compensation the Accident Fund shall, nevertheless, be deemed one and indivisible".

In a number of the provinces the Acts are divided into two Parts. Part I is under the jurisdiction of the Workmen's Compensation Board. Part II of these Acts applies to industries not in Part I. It sets out the right of a workman outside Part I to bring an action in court for negligence against his employer, and declares certain common law defences of the employer inapplicable.

Part I in Ontario and the Quebec Act contain two schedules of industries. Schedule 1 contains a list, by class, of industries in which the employers are collectively liable for payment of compensation. Schedule 2 contains a list of industries in which employers are individually liable. The latter consists mostly of large organizations, such as the railways and shipping companies, and the provincial and municipal governments. Schedule 2 employers do not pay a regular yearly assessment to the Accident Fund. When an accident happens, the Board charges the total costs of compensation and medical aid directly to the employer, as well as the costs of Board administration.

References in this study to the Act or to Part I are, unless otherwise indicated, references to the collective liability system, or that part of the Act over which the Board has jurisdiction. In Ontario and Quebec, both Schedules 1 and 2 are within the jurisdiction of the Board.

REVIEW OF ACTS

In some provinces it is the practice to review periodically the Workmen's Compensation Act and its administration, at which times employers, employees, industry and labour organizations and other interested parties are given an opportunity to make representations.

In Saskatchewan, the Act provides for the appointment of a committee of review, equally representative of employers and organized employees and consisting of five or more members, every four years. The Newfoundland Act requires the Lieutenant-Governor in Council to appoint a committee of three or more members to

review the Act at least once every five years. A five-man committee was set up for this purpose in 1965, and its report was tabled in the Legislature during the 1967 session. Although it is not a statutory requirement, the Alberta Act is reviewed by a special committee of the Legislature every four years. Such a committee reported to the Legislature in 1965.

To obtain a more comprehensive review of the Act and an assessment of the efficiency of its administration, one-man Royal Commissions have been appointed in several provinces. This has been a tradition in Ontario and British Columbia. The first Act in Ontario, which served as a model for other provinces, was based on the 1913 Report of Royal Commissioner Sir William Meredith. In the next half century two further inquiries were made, those of Mr. Justice W.E. Middleton (1932) and Mr. Justice W.D. Roach (1950), and a third, with Mr. Justice George A. McGillivray as Commissioner, was begun in 1966 and completed in 1967. In British Columbia, there have been three Royal Commission investigations into the Workmen's Compensation Act, two by Chief Justice G. McG. Sloan (1942 and 1952) and a third by Mr. Justice C.W. Tysse (1965).

Other inquiries were made by Hon. W.F.A. Turgeon in Manitoba and by Judge A. H. McKinnon in Nova Scotia¹. Both of these Commissions reported in 1958.

The Reports of these Royal Commissions are a valuable source of information with regard to the history and development of workmen's compensation legislation in Canada.

Recommendations of a legislative committee or Royal Commission are to a large extent incorporated in legislation, and each inquiry brings about a number of changes in the Act.

HISTORICAL BACKGROUND

In all provinces but Prince Edward Island the laws establishing schemes of collective liability and compulsory insurance in an exclusive state fund replaced earlier Acts which provided for a system of individual liability on the part of the employer.

The earlier employers' liability statutes were themselves enacted as remedial legislation in an effort to improve the position of the workman when bringing a damage suit against his employer under the common law.

Under the common law, the employer could be held liable for damages for injuries suffered by an employee in the course of his employment only where he could be proved negligent, and he was in a position to defend himself against the allegation of negligence because of certain legal defences that were available to him.

By reason of an implied term of his contract of service, an employee was held to assume the risks incidental to his employment, and the employer was relieved of responsibility for the consequences of risks to which the employee had knowingly and voluntarily subjected himself (referred to as the *assumption of risk*

¹ A three-man Commission of Inquiry was appointed to investigate the Nova Scotia Act in 1936.

rule). A further defence was the *doctrine of common employment* or *fellow-servant doctrine* by which the employer could be freed from liability if it could be shown that the employee had been injured through the negligence of a fellow workman. The employer could also escape liability, no matter how gross his own negligence, if he could show that the workman himself had been negligent in any degree (*defence of contributory negligence*).

Few cases were settled to the advantage of injured workmen or their dependants. Chief Justice Sloan stated in his 1942 Report (p. DD12) that it appeared that under the common law only 20 to 30 per cent of the workmen injured in industrial accidents could hope to recover damages from their employers and even then, in many instances, after protracted and expensive litigation.

Employers' liability statutes adopted in a number of provinces between 1886 and 1911 modified the employer's common law defences to some extent (particularly with reference to the doctrine of common employment). Except in Quebec, where a 1909 Act laid down the right of a workman to compensation regardless of fault, these laws continued, however, to require an injured employee to prove his employer negligent in court before he could recover damages.

Under the employers' liability Acts in effect in most provinces prior to the introduction of the collective liability system, employers were required to insure their risk with a private insurance company.

Dissatisfaction with the system and recognition that work accidents were not necessarily the result of someone's fault but were due to the nature and conditions of modern industry led to public demand for a new system more in keeping with the realities of an industrialized society.

The present concept of workmen's compensation had its beginnings in Ontario in 1910, when Sir William Meredith, later Chief Justice of the Supreme Court of Ontario, was named as a Commissioner to "enquire into laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries". In his final report, made after thorough study of the then existing laws in Great Britain, Western Europe and the United States, the Commissioner recommended a completely new system of workmen's compensation, framed, with certain modifications, on the main lines of the German law, which he described as "practically a system of compulsory mutual insurance under the management of the state". An Act passed in 1911 in the State of Washington providing for compulsory insurance in an exclusive Accident Fund also served as a model for the draft Bill which the Commissioner submitted with his report. Some of the clauses of the draft Bill were taken from the British law of 1906.

The new Ontario law based on the Commissioner's recommendations went into force on January 1, 1915. It provided for cash benefits for wage loss resulting from accidents but made no provision for medical aid or rehabilitation. Medical aid provisions were added to the

Act in 1917 and provision was made for rehabilitation in 1924.

By 1931 all provinces except Prince Edward Island had enacted a law modelled on the Ontario statute, providing that compensation for industrial injuries was to be paid from a state fund operated on a collective liability basis.

Nova Scotia followed Ontario's example in 1915, British Columbia in 1916, Manitoba in 1916 with respect to collective liability but not until 1920 with respect to state insurance, Alberta and New Brunswick in 1918, Saskatchewan in 1929 and Quebec in 1931. Prince Edward Island passed its first Workmen's Compensation Act in 1949. In 1950 Newfoundland enacted a collective liability statute which went into effect on April 1, 1951. While the Acts embody the same general principles, they vary as regards details, as, for example coverage and the scale of benefits provided.

The fundamental difference between the new workmen's compensation system and the old was that the new system embodied the doctrine of *liability without fault*. The employee became entitled to compensation as of right without the necessity of proving negligence on the part of the employer, and the mere fact of the relationship which the employee bore to the employment made the employer responsible in case of accident. This new concept of responsibility was summed up by Mr. Justice Rand in a 1952 case² before the Supreme Court of Canada as follows: "injury so resulting was recognized as part of the wear, tear and breakage of the work being done which the business, as part of its expense, ought to bear."

Thus, under the new system, the injured workman surrendered his right to bring action for damages against his employer, and received in return certain benefits, regardless of his own negligence or that of his employer.

In the words of the Turgeon Report (p. 13):

This doctrine [liability without fault] having been established, there arose out of its application the theory that the community for whose use the product was manufactured or handled should bear the burden of compensation and that the costs imposed upon industry in respect of its injured workmen should be added to industry's costs of production and carried on into the selling price of the product.

In place of being personally liable for payment of compensation, employers came under a scheme of compulsory mutual insurance in a government-operated Accident Fund. Private insurance coverage was eliminated.

Another central feature of the new system was that the adjudication of claims was placed in the hands of a largely autonomous Workmen's Compensation Board, which was given exclusive jurisdiction to decide all matters of compensation, thus eliminating the expensive and technical procedures and delays of the courts.

The advantages to the injured workman were obvious. He was granted protection for all accidents sustained while at work instead of merely those caused by

¹ *Workmen's Compensation Board v. C.P.R. and Noell* (1952) 3 D.L.R. 642.

his employer's negligence. He had certainty of payment of compensation, regardless of his employer's financial position. Instead of a lump sum payment ordered by a court as damages, with no provision for medical care and rehabilitation, he became entitled to prompt payment of compensation, by regular, periodic instalments, and was assured of all reasonable medical care and rehabilitation. (Although medical care and rehabilitation were not at first provided for, they were soon regarded as vital parts of the compensation system).

The fact that the injured workman remained under the continuing supervision of the Board enabled him to have his case reopened at any time, should he suffer a recurrence of his disability or his condition deteriorate.

The advantages to the employer were summed up in the Roach Report (p. 11):

The benefits to the employers need only be enumerated without any comment. The employers in Schedule 1 are given immunity against individual liability and are provided with a system of mutual insurance which is the cheapest form of insurance. The smaller employers avoid the risk of financial ruin as a result of accidents to their employees. The cost to the employers in both schedules 1 and 2 is made as certain as possible having regard to the vagaries of accidents, and within certain limitations they are enabled to reckon that expense in their costs of operation.

LEGISLATIVE JURISDICTION

As a result of court decisions, beginning with a case decided by the Supreme Court of Canada in 1890, provincial workmen's compensation laws have been held to be within the competence of the provincial legislature and applicable to all employers within the province. In several decisions involving railway and shipping companies, in certain other respects under federal jurisdiction, the courts ruled that the province had legislative authority to provide for payment of compensation to workmen of such companies injured by accident in the course of their employment. As laws imposing a condition on the contract of employment, the provincial Workmen's Compensation Acts were held to be laws in relation to civil rights in the province. One of the cases referred to above, dealing with the British Columbia Act, described it as "a scheme for securing a civil right within the Province".

In 1890 the Ontario Workmen's Compensation for Injuries Act was held to be³:

not legislation respecting such local works and undertakings as are excepted from the legislative jurisdiction of the provinces by article 10 of section 92 of the B.N.A. Act. It touches civil rights in the provinces.

The Act was stated to apply to the Canada Southern Railway Company, a company within federal jurisdiction. (The railway had earlier been declared by Parliament to be a work for the general advantage of Canada).

In 1920 in a case⁴ arising from the loss of a Canadian Pacific Railway Company steamship which plied between British Columbia and United States ports, and in which all members of the crew, who had been engaged while resident in the province, were drowned, the Judicial Committee of the Privy Council held that the British Columbia Workmen's Compensation Act was applicable.

In two later decisions⁵, one of the Judicial Committee of the Privy Council in a Manitoba case involving a Canadian Pacific Railway Company employee killed on duty, and the other of the Supreme Court of Canada regarding the application of the Quebec Workmen's Compensation Act to a shipping company, the courts held that the provincial Acts applied to the workers concerned.

Under its exclusive authority to legislate concerning federal government employees, Parliament passed the Government Employees Compensation Act in 1918 providing for the payment of employment injury compensation to such employees. Under this Act, "an employee in the service of His Majesty", or his dependant, was given entitlement to compensation for injury from an accident occurring in the course of his duties at the same rate and under the same conditions as were provided for a workman in private industry under the law of the province in which the accident occurred. Provision was made for the adjudication of claims by the Workmen's Compensation Board of the province in which the accident occurred, acting as the agent of the federal Government. Costs of compensation, plus a proportionate share of the Board's total administrative costs, are paid by the federal Government.

In 1945 by Order in Council (P.C. 4755) made under the War Measures Act, the federal Government provided for workmen's compensation for merchant seamen who were not within the scope of the Government Employees Compensation Act or any provincial workmen's compensation law. An Act (the Merchant Seamen Compensation Act) giving statutory form to the provisions of the Regulations was enacted by Parliament in 1946. The system established was one of individual liability of the employer, who was required to cover the seamen in his employ by insurance satisfactory to the Merchant Seamen Compensation Board.

Under jurisdiction conferred by Parliament in the Yukon Act and the Northwest Territories Act, the Commissioner and Council of the Yukon and Northwest Territories, respectively, have power to legislate with respect to property and civil rights in the Territory. Exercising this jurisdiction, both Territorial Councils have enacted Workmen's Compensation Ordinances. These Ordinances make the employer individually liable for the payment of compensation to his workmen for employment injury and require him to insure his liability with an approved underwriter.

⁴Workmen's Compensation Board v. Canadian Pacific Railway (1920) A.C. 184, 48 D.L.R. 218.

⁵McColl v. Canadian Pacific Railway Company (1923) A.C. 126, 69 D.L.R. 593 and Sincennes-MacNaughton Lines Limited v. Bruneau (1924) S.C.R. 168.

³Canada Southern Railway Company v. The King (1890) 17 S.C.R. 316.

CHAPTER I

Entitlement to Compensation

Compensation benefits are payable when, in an employment within the scope of the provincial workmen's compensation system, "personal injury by accident arising out of and in the course of the employment is caused to a workman". There is some variation of this formula in the Quebec Act (see below).

The phrase "personal injury by accident arising out of and in the course of the employment" was adopted from the British Workmen's Compensation Act of 1897 and is widely used in workmen's compensation statutes in English-speaking countries. This basic formula confers on a workman the right to compensation when it can be established that an accident causing personal injury not only occurred while the workman was working at his employment (in the course of) but also was caused by the employment (arising out of). The right to coverage also depends on the definition of "accident" laid down in the Act.

The Tysoe Royal Commission (pp. 173-188) recommended that the words "by accident" should be deleted from the formula in the British Columbia Act, with the result that the phrase giving rise to the right to benefits would be "personal injury arising out of and in the course of the employment".

The Commission considered that the retention of the words "by accident" had an unnecessarily limiting effect and was not in line with the basic purpose of the workmen's compensation law, which was that injuries of all kinds should be compensated.

In its view, "accident" was no longer an essential element of the right to compensation and the test should simply be "was the workman's disability truly work-caused?" It considered that medical and legal tests to determine whether injury was work-connected would remain a bulwark against improper claims.

The opinion of the Commission was reinforced by a study of court cases in England, and of a case that came before the Supreme Court of Canada.¹ The Commission summed up the thinking on the subject as follows:

Nevertheless, in my opinion there has been a continuing tendency on the part of the Courts to so liberalize the interpretation of the famous phrase and particularly the words "injury by accident" as to assure that any injury that arises out of and in the course of employment—that is truly work-caused—will be compensated for. No longer is "accident" limited to a sudden smash or bang or to a single fortuitous event. It has been held by the highest authorities that a series of events, small in themselves but cumulative in effect, can, in given circumstances, collectively constitute an accident. I think that all this is an example of the Courts keeping up with the developing social conscience, and that to provide compensation for all work-caused injuries and disabilities is in accord with that conscience as it is today.

In all the Acts except that of Quebec, an injury is not compensable unless it has arisen both "out of" and "in the course of" employment. The Acts contain provisions, however, creating a legal presumption in favour of the workman. These provisions state that, unless the contrary is shown, an accident that arose out of the employment is presumed to have occurred in the course of the employment; and, unless the contrary is shown, an accident that occurred in the course of employment is regarded as having arisen out of the employment.

The Quebec Act uses the formula "arising out of or in the course of the work". It does not contain a presumption whereby an accident that occurred in the course of employment is regarded, unless the contrary is proved, as having arisen out of the employment and vice versa. Thus, under the Act, an injury may be regarded as compensable where the accident causing it has arisen "out of" the employment or where the accident has arisen "in the course of" the employment. In providing for one of two alternatives as sufficient proof of work connection, the Quebec Act takes the same approach as that of France and of most of the Australian states. The use of the word "or" would appear to enable the Commission to allow claims that would not be acceptable if "and" were used.

In the definition of "accident" in the provincial Acts the word "includes" is used, indicating that accident is to be given its ordinary meaning. This is made clear in the Quebec Act, which states "without restricting the ordinary meaning thereof..." The express inclusions make it clear that the "act" or "event" or "conditions" mentioned or described come within the definition of "accident".

The word "accident" was originally defined in most Canadian compensation statutes to include "a wilful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause". The Alberta, British Columbia, New Brunswick and Ontario Acts refer to a "chance" rather than "fortuitous" event. This initial definition is still retained in the Acts of Newfoundland, Nova Scotia, Quebec and Saskatchewan and in the two federal compensation Acts.

In Manitoba, a new and extremely general definition was adopted in 1959. "Accident" in that Act means a chance event occasioned by a physical or natural cause, but also includes:

- (i) a wilful and intentional act that is not the act of the workman; and
- (ii) any event arising out of, and in the course of, employment or thing that is done and the doing of which arises out of, and in the course of, employment; and
- (iii) conditions in a place where an industrial process, trade or occupation is carried on, that occasion a disease;

and as a result of which a workman is disabled.

¹ *Workmen's Compensation Board v. Theed* (1940) S.C.R. 553.

The Manitoba definition was thus made broad enough to cover any industrial disease caused by the nature of the employment, and, with its adoption, the use of a schedule of diseases was discontinued. The Act states that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed to be the date of the accident.

In five provinces — Alberta, British Columbia, New Brunswick, Ontario and Prince Edward Island — the initial definition of "accident" has been widened by the addition of the words "[as well as] disablement arising out of and in the course of employment". The Alberta, British Columbia and New Brunswick definitions state, in addition, that, where the disablement is caused by disease, the date of the accident is to be deemed to be the date of the disablement.

Under the broader definition, the Board is enabled to consider as an "accident", and to compensate for, any disablement that can be shown to have been due to the nature of the workman's employment, including disablement resulting from an industrial disease, even though there has been no accident in the narrow sense. It also makes it possible to accept border-line cases, perhaps not allowable under the earlier definition.

By broadening the definition of "accident", legislatures have endeavoured to cover all work-caused injuries, in line with the social philosophy set out in the *Theed* case mentioned above.

RISKS COVERED

In Newfoundland, Nova Scotia and Prince Edward Island, compensation is payable for injury by lightning. These Acts state that:

Personal injury by accident includes personal injury by lightning, and where personal injury by lightning occurred in the course of the employment it shall be conclusively presumed that it arose out of the employment.

Frostbite is compensable as an accident in Saskatchewan when a workman is frostbitten under circumstances arising out of and in the course of his employment. In Newfoundland, Nova Scotia and Prince Edward Island, frostbite occurring in any outdoor work (in Newfoundland, in any process) is scheduled as an industrial disease.

A clause in the Alberta and Saskatchewan Acts provides that, where a workman is found dead at a place where he had a right in the course of his employment to be, it is to be presumed that his death was the result of an accident arising out of and in the course of his employment, unless there is sufficient evidence to rebut the presumption.

Similar provisions in the Newfoundland and Nova Scotia Acts apply to a workman found dead in the underground workings of a mine (in Nova Scotia, of a coal mine). The Nova Scotia provision does not contain the words "at a place where the workman had a right in the course of his employment to be".

The Quebec Act, as amended in 1967, states that, where a workman has disappeared following an accident under circumstances giving rise to a presumption of death, the Commission may for purposes of the Act fix

the date of death as the date of the accident, until proof to the contrary is established.

EXCEPTIONS

All the Acts state that compensation is not payable where a workman's injury has been brought about solely by his own serious and wilful misconduct, unless the injury results in death or serious disablement, in which case benefits are to be paid.

The Acts vary somewhat in the wording of this provision. The circumstances in which compensation is payable even where the workman's misconduct caused the injury are as follows:

Alberta	
Ontario	
Prince Edward Island	— where the injury results in death or serious disablement
Quebec	
Saskatchewan	
Newfoundland	— where the injury results in death or serious and permanent disablement
New Brunswick	
Nova Scotia	
British Columbia	— where the injury results in death or serious and permanent disablement
Manitoba	

The New Brunswick Act is more explicit than the other Acts in setting out the misconduct that may result in denial of compensation benefits. It states that compensation is payable unless the accident was:

in the opinion of the Board, intentionally caused by such workman, or was wholly or principally due to intoxication or serious or wilful misconduct on the part of the workman and did not result in death or serious and permanent disability of the workman.

WAITING PERIOD

Waiting periods are a regular feature of workmen's compensation laws, on the theory that the waiting period constitutes part of the workman's contribution to the scheme.

The laws provide that when a workman suffers personal injury arising out of and in the course of his employment he receives no compensation unless he is disabled for at least a specified number of days.

The original provincial laws provided for a lengthy waiting period. In Ontario, a waiting period of seven days was in effect until 1952, when it was reduced to five days. The present waiting period of three calendar days was put into effect in 1963. The original Act of British Columbia provided that a workman could not recover compensation for the first three days of his disability no matter how long he was incapacitated. In 1925 the Act was amended to provide that, when the disability was of more than 14 days' duration, compensation was then payable from the date of disability. This 14-day period was reduced to six days in 1946. Since 1959 compensation has been payable for any injury that results in more than three days' loss of work.

Similar reductions have been made in the waiting period in all other jurisdictions.

In five provinces — Alberta, Manitoba, Newfoundland, Prince Edward Island and Saskatchewan — the

waiting period has been shortened to one day, the day upon which the workman's accident occurs. The Acts state that, if the injury does not disable the workman longer than the day of the accident, no compensation other than medical aid is to be paid, but if the injury disables the workman longer than the day of the accident, compensation is payable from and including the day following the accident. The Acts provide for payment of compensation beginning from the day following the accident for the reason that the workman usually receives his wages for the day of his accident. If compensation were payable, he would receive double payment for that day.

In British Columbia, Ontario and Quebec, the waiting period is three days; New Brunswick and Nova Scotia have a waiting period of four days.

The waiting period does not affect the right of the workman to free medical treatment, which, under all the Acts, is provided from the time of the injury.

Under several Acts, where a workman suffers a permanent partial disability, but is able to return to his employment before the waiting period has elapsed, the Board is given discretion to pay him benefits, despite his non-compliance with the waiting period requirement.

CHAPTER II

Benefits Under Workmen's Compensation Laws

Various types of benefits are provided for a workman protected by workmen's compensation legislation: protection against accidents as a result of the accident prevention activities of the Board or an employers' accident prevention association; first aid, when the workman is injured in the course of his employment; all necessary medical aid, including hospitalization; cash benefits during the period of disablement (75 per cent of his wages, subject to an annual wage ceiling); rehabilitation (physical and vocational); and a pension payable for life for any resulting permanent disability (or, when disablement is slight, a lump sum payment).

In case of a fatal accident, cash benefits are provided for the widow and dependent children of the deceased workman or other persons who were wholly or partly dependent upon his earnings at the time of his death or who, but for the incapacity due to the accident, would have been so dependent.

A workman may not agree with his employer to forego the benefits of the Act. Any such agreement is null and void. The Acts protect the workman's right to receive benefits intact. Assignment of compensation to another person is prohibited, except in certain special circumstances or unless the Board gives its approval. Most Acts provide that compensation cannot be assigned, charged or attached, and no claim may be set off against it, without the approval of the Board. The Quebec Act states that compensation "shall be inalienable and exempt from seizure".

The cash benefits payable in case of disability and death are described below.

TEMPORARY TOTAL DISABILITY

Most compensation cases involve temporary total disability. The injured workman is totally incapacitated for work while recovering from the injury. The disability ends with his recovery and return to work.

When the workman is totally disabled for the duration of the "waiting period" (that is, the period giving entitlement to compensation), he is paid what is referred to as "time-loss compensation".

In all provinces time-loss compensation is 75 per cent of the workman's average weekly earnings computed in accordance with the terms of the Act, disregarding any excess of earnings over the annual wage ceiling. The ceiling on annual earnings varies in the provincial Acts from \$5,000 to \$6,600 (see p. 10). For a discussion of the methods of computation of average earnings, see page 2.

Compensation payments for temporary total disability may not be less than a specified amount, which varies in the Acts from \$20 to \$35 a week. Where a workman's average earnings are less than the minimum, his actual average earnings must be paid. Thus, 100 per cent of average weekly wages are paid when weekly

wages are below the stated minimum. In British Columbia, where permanent disability pensions are tied to the cost of living, the minimum compensation payment increases 2 per cent annually for each 2 per cent rise in the consumer price index.

Time-loss compensation is paid every two weeks for the duration of temporary disability and ceases when the workman has resumed his usual employment or when medical reports show that he is fit to return to work.

In some provinces the general rule, in calculating compensation for temporary total disability, is to take the workman's average earnings for the four weeks immediately preceding the accident.

Under the Saskatchewan Act, compensation is based on the rate of the workman's remuneration at the time of the injury, unless his average earnings for the year previous to the accident are higher, in which case the average earnings for the year are used.

TEMPORARY PARTIAL DISABILITY

Temporary partial disability compensation is paid when a workman who originally was totally disabled has progressed towards complete recovery to the point where he is physically able to take some suitable employment, frequently referred to as "light work". The time when a workman is to be taken off temporary total compensation entirely or have his compensation changed to the basis of temporary partial disability is usually determined by his physician or by the medical officers of the Board.

Where a workman is only capable of returning to a lighter type of work and must accept a wage loss, he receives compensation at a reduced rate, on the basis that he is now only partially disabled. Compensation for temporary partial disability may be paid either on a loss of earnings basis or on the basis of loss of function, depending on the province. Compensation is payable as long as disability lasts.

Under a number of the Acts, compensation for temporary partial disability is 75 per cent of the difference between the earnings of the workman before the accident and the amount that he is earning or is physically capable of earning, as determined by the Board, in some suitable employment after the accident (the loss of earnings method).

In Saskatchewan, compensation for temporary partial disability is a proportionate amount of the compensation payable for temporary total disability, based on the extent of impairment of earning capacity resulting from the injury (the loss of function method).

In Ontario, compensation for temporary partial disability is paid in accordance with the percentage rate of disablement or 75 per cent of the actual wage loss, whichever is less.

The British Columbia Act provides that temporary partial disability may be compensated on the basis of either loss of function or loss of earnings, and in practice the Board uses both methods.¹ The Tysoe Commission was of the opinion that there should be flexibility in the handling of temporary partial disability cases, but recommended that the provision in the Act for payment of compensation on a loss of function basis be dropped.

Labour representatives from time to time voice objections to the concept of temporary partial disability, and request elimination of the practice of reducing compensation benefits before the workman's full recovery and return to his normal occupation or entry into other suitable employment. They point out that frequently, where the workman has the physical capacity to do some type of work, although not his usual type, there is no "light work" available, and state that it is unrealistic to place him on a loss of earnings basis simply because he is physically able to do work which is unobtainable. In such circumstances, they urge, the workman should receive full compensation.

PERMANENT TOTAL DISABILITY

Persons having a permanent total disability are presumed not to be able to work at all. Permanent total disability includes the loss of the sight of both eyes, the loss of both feet or both hands, injury to the spine resulting in permanent and complete paralysis and other types of injury that will continue for life or indefinitely and that prevent a person from carrying on a gainful occupation. The condition usually remains static but sometimes may be slowly progressive.

After a workman has made as complete a recovery as possible, doctors assess his residual disability. If he is judged to have a permanent total disability, he is entitled to a monthly pension for life.

Permanent total disability is compensated at the same rate as temporary total disability (that is, 75 per cent of the workman's average weekly earnings), except that the award may be computed on average earnings over a longer period. The average earnings of the workman for the 12 months immediately preceding the accident are usually taken into consideration (see p.11). As with temporary total disability, earnings are subject to an annual wage ceiling. For example, where the ceiling is \$6,000, a totally disabled workman is entitled to receive 75 per cent of his average earnings, up to \$6,000 a year (or a maximum of \$86.54 a week).

In each province but New Brunswick, a minimum payment is fixed for permanent total disability. Minimum payments vary from \$20 a week to \$150 a month. Except in Nova Scotia and Saskatchewan, if a workman's average earnings are less than the minimum, he then must receive the full amount of his average earnings. As already indicated, in British Columbia, disability pensions and minimum compensation are increased 2 per

cent annually for each 2 per cent rise in the consumer price index.

In Ontario, if the workman earns less than the stipulated minimum of \$150 a month, the minimum payment is the amount of his earnings, subject to a floor of \$100. Thus, no matter how low a workman's average earnings, his monthly pension may not be less than \$100.

In Nova Scotia, a new minimum payment for permanent total disability, taking into account dependants under 16, was adopted in 1960. If, at the time of the award, a totally and permanently disabled workman has more than one dependent child under 16, his compensation, while more than one of the children are dependent and under 16, is to be not less than the amount payable to a widow with the same number of dependent children. As a child reaches the age of 16, the allowance for that child is dropped, and eventually the award reverts to the regular award for the disability. In making this amendment, the Legislature provided that the costs of increasing compensation in respect of past accidents (claims made prior to May 1, 1960) were to be paid from the Consolidated Revenue Fund. The current minimum for permanent total disability for pensioners not in the category outlined above is \$125 a month.

The Manitoba Act states that the Board may award compensation for permanent disability suffered by a workman but without temporary total disability. A similar provision in the Nova Scotia, Ontario and Prince Edward Island Acts gives the Board authority to pay compensation where a workman suffers a permanent partial disability but is able to return to his employment before the waiting period has elapsed.

PERMANENT PARTIAL DISABILITY

Permanent partial disability involves the loss of, or loss of use of, a member of the body, or any other permanent impairment not serious enough to be classified as permanent total disability.

A worker with a permanent partial disability has a permanent impairment but is not completely disabled. He is usually able to work. If he cannot resume his former employment, he can often do, or be trained to do, other types of work.

Where a permanent partial disability results from an injury, a worker is awarded a monthly pension for life or a lump-sum payment, depending on the severity of the disablement. Minimal awards are paid on a lump-sum basis. The pension is paid, regardless of future earnings.

Partial disablement entitles a workman to proportionate compensation. Benefits are based on 75 per cent of the workman's average earnings, usually for the year prior to the accident, and the compensation awarded is the same proportion of 75 per cent of the workman's average earnings as the workman's disability is of his full earning capacity. The Board is directed to estimate the impairment of earning capacity from the nature and degree of the disability resulting from the injury.

In arriving at the amount of a permanent partial disability award, the degree of physical disability is the

¹ The practice of the Board with respect to payment of compensation for temporary partial disability is described in detail in the Tysoe Report (p. 289).

determining factor but consideration may also be given to the age of the workman at the time of the injury and in some cases regard may be had to the occupation of the workman.² The New Brunswick Act states that the degree of disfigurement is to be taken into consideration as well as impairment of earning capacity.

Under several Acts (Alberta, British Columbia, Manitoba and Saskatchewan), the Board is authorized to award compensation for disfigurement. Three (British Columbia, Manitoba and Saskatchewan) expressly provide that such payment may be made even though the workman's earnings have not been substantially diminished by reason of the disfigurement. The Acts state specifically that, where a workman has been seriously and permanently disfigured about the face or head, the Board may recognize the injury as an impairment of earning capacity and allow a lump sum or periodical payments as compensation (in British Columbia, a lump-sum payment only). The McGillivray Royal Commission Report (p. 20) recommended the adoption of a similar provision in Ontario.

There is still a provision in a number of the Acts permitting the Board, where it deems it more equitable to do so, to pay compensation for permanent partial disability according to the wage-loss method. Under this method, compensation is based on the difference between the average earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable occupation after the accident and is a periodical payment equal to 75 per cent of such difference. The loss of earnings method was not found satisfactory and is no longer followed in the administration of Canadian workmen's compensation laws.

The Acts do not set rates of benefit for particular injuries, loss of members or loss of function. The practice of the Boards is to use a rating schedule which translates the more common injuries into a percentage of loss of earning capacity. That is, a particular percentage for a given disability indicates the extent to which the disability will impair the workman's ability to earn. For instance, the loss of an arm at the shoulder might be regarded as a loss equal to 70 per cent of full earning capacity, and the compensation award would be calculated by taking 70 per cent of 75 per cent of the workman's average weekly earnings, disregarding any excess of earnings above the ceiling fixed by the Act. The Acts contemplate the use of a rating schedule as a guide in determining the amount of compensation payable in permanent partial disability cases.

Actuarial tables are used in calculating the amount of the lump sum to be paid to a workman or in arriving at the capitalized value of the amount that is to be set aside in the pension fund if a pension is involved, that is, the amount required to guarantee future payment of current pensions.

The Boards have discretionary power to commute pensions where they consider that a recipient will make proper use of a lump sum. In some provinces they may not do so except on the application of, and at an amount agreed to by, the dependant or workman concerned. In general, it is contrary to Board policy to pay compensation in a lump sum, since monthly payments are intended to compensate for possible reduced earning capacity in future years. In permanent partial disability cases a lump-sum payment may be made where impairment of earning capacity does not exceed 10 per cent (in Alberta, 5 per cent) and where the Board considers it is to the advantage of the workman to do so.

A claim for compensation may be reopened and reviewed at any time. A workman is always entitled to medical treatment for a condition directly resulting from the accident. In cases where medical evidence indicates that the disability due to the accident has increased or decreased, the Board has authority to reassess the amount of the award.

A workman is not entitled to receive compensation payments in addition to his regular wages during the period of disability.

All the Acts provide that, where any payment or advance (payment, allowance or benefit) is received by the workman from his employer during the period of his disability (in some provinces, "in respect of the workman's accident"; in Alberta, "in respect of the period of his disability"), the amount may be deducted from the compensation and refunded to the employer.

Some of the Acts (Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia) take account of the situation where the workman's injury may be due in part to the employment and due in part to other causes, and enable the Board to apportion a percentage of the disability to the accident or disease.

The British Columbia and Nova Scotia statutes provide that, where injury or disease is in part due to the employment and in part due to other causes, or where a pre-existing condition or disease is aggravated, accelerated or activated by the injury, compensation may be awarded for such proportion of the disability as may reasonably be attributed to the personal injury sustained.

The Alberta and Manitoba provisions are similar in effect. They apply to cases where personal injury consists of a disease in part due to the employment and in part due to other causes. The New Brunswick provision applies in any case where a pre-existing disease is aggravated by an injury. In all such cases the Board may accept responsibility for that part of the disablement which may reasonably be attributed to the injury sustained by reason of the employment.

The Prince Edward Island Act provides, however, that, where a personal injury by accident is aggravated

² The practice of the British Columbia Board has been described (Workmen's Compensation Board News Bulletin, August, 1967) as follows: "Three factors are considered by the WCB when determining a pension award — percentage of disability, average earnings and age adaptability. The age adaptability factor is used for disabled workmen over the age of 45 years. For each year over the age of 45 one per cent is added to the assessed disability. The reason for this is because older workmen with permanent disabilities have more difficulty in learning new skills and finding employment which they are capable of handling."

by a pre-existing condition inherent in the workman at the time of the accident, the workman is to be granted full compensation, unless the pre-existing condition was due to an injury for which the workman received or was receiving compensation.³

Benefits payable in each province in case of disability are shown in the tables beginning on page 108.

CEILING ON ANNUAL EARNINGS

In all provinces a ceiling is placed on the annual earnings of workmen for purposes of the Act. A workman whose earnings are above the ceiling is regarded, for purposes of calculating a compensation award, as earning the amount of the ceiling. Similarly, his employer is assessed on his earnings only up to the amount of the ceiling.

The ceiling of \$2,000 which was set in the original Act of Ontario was described by Sir William Meredith as "probably the maximum amount earned in a year by the highest paid wage earner". Each provincial ceiling is raised from time to time as a substantial percentage of workmen earn more than the maximum, but the principle that the ceiling should represent the maximum yearly earnings of the highest paid wage earner is no longer followed.

The purpose of prescribing a limit on annual earnings was stated in the 1942 Sloan Royal Commission Report (p. DD27), as follows:

The reasons for the inclusion of the maximum principle and the consequent exclusion of the highly paid wage-earner or salaried executive from the benefits of the Act are generally regarded to be, first, that the Act is designed to protect those who are unable, because of their low income, to carry any accident insurance. Those in the higher income brackets are considered able to protect themselves. Secondly, the compensation awarded highly paid workers would, in hazardous occupations, tend to increase compensation assessments on small industries in those classes to an unduly high rate.

As of December 31, 1967, the ceilings on earnings in the various provinces were as follows:

\$5,000 — Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island;
\$5,600 — Alberta;
\$6,000 — Ontario, Quebec and Saskatchewan;
\$6,600 — British Columbia and Manitoba.

The British Columbia Act provides for periodical increases in the ceiling, in line with a formula proposed by Mr. Justice Tysoe (p. 35), which he considered would "make for some sort of reason and order" in increasing the ceiling on earnings in future years.

Under this formula, put into effect by an amendment to the Act effective from November 1, 1965, the maximum wage rate is to be automatically increased by \$1,000 if at the end of any year the records of the Board

show that (1) not less than 20 per cent of the workmen on whose claims first payments were made during that year had actual gross earnings for the 12-month period immediately before the accident of more than \$1,000 in excess of the existing maximum and (2) not less than 45 per cent of the workmen on whose claims first payments were made during that year had actual gross earnings for the 12-month period immediately preceding the accident which were higher than the existing maximum.⁴

This formula, by permitting automatic increases in the ceiling in line with rising levels of wages, removes the need to amend the Act at intervals to raise the ceiling.

Organized labour frequently asks for removal of the wage ceiling on the ground that workers earning more than the fixed maximum receive less than 75 per cent of their earnings, when disabled.

COMPUTATION OF AVERAGE EARNINGS

Disability benefits in all provinces are based on 75 per cent of the "average earnings" of the workman. In order to make a compensation award, the Board is required to calculate average earnings and is given a wide discretion under all the Acts so as to enable it to ascertain as fairly as possible the loss of earnings suffered by the injured workman.

All the Acts stipulate that, in the determination of average earnings, the maximum annual earnings (ceiling) laid down in the Act must be observed.

Actual earnings, not the rate of wages, are used as the basis of compensation payments. The earnings taken are total earnings before any deductions have been made for income tax, unemployment insurance and the like, and include vacation pay, value of board and lodging (where supplied in lieu of wages), gratuities, bonuses and any other allowance or remuneration.

It is not the practice of the Boards to reduce average earnings by taking into account time lost due to illness or reasonable holidays, but slackness of business or seasonal close-down counts against the workman in the determination of average earnings.

The reason why "average earnings" are generally taken as the basis of compensation in non-fatal cases was set out in an English court case⁵ cited by Chief Justice Sloan in his 1942 Royal Commission Report (p. DD67), as follows:

The object of the schedule is to arrive at a fair estimate of what the workman was earning at the date of the accident. But to regard this as rigidly determined by the rate at which he was earning remuneration at the precise moment of the accident would be to adopt a principle which would often lead to unfair results. The remuneration which the workman was earning at that particular moment might be abnormally exaggerated or diminished by reason of temporary

³This provision is in line with a recommendation of the Roach Royal Commission Report in Ontario (p. 46). In Ontario, under the present policy of the Board, the workman receives his full pension in such circumstances and half the award is charged to the Second Injury Fund (McGillivray Royal Commission Report, p. 117).

⁴Mr. Justice McGillivray recommended the introduction of a similar formula in the Ontario Act (p. 8).

⁵*Perry v. Wright* (1908) 1 K.B. 455.

and exceptional causes which would make it an inaccurate measure of the workman's normal earnings. The Legislature, therefore, by the use of the word "average" indicates that the rate of remuneration is to be arrived at by taking into consideration the earnings during an adequate length of time previous and up to the time of the accident for the purpose of obtaining the average remuneration during that period, rightly deeming that this will more fairly represent the rate of remuneration which the workman was then receiving than would any method of estimating the rate of remuneration solely based on the state of circumstances prevailing at the precise moment of the accident. In doing so it is only adopting the same process that any sensible person would adopt in estimating the rate of remuneration of himself or any other person at a particular point of time.

In line with the averaging principle enunciated above, the Board is directed to determine average earnings for a 12-month period previous to the injury (or may average earnings over a longer period, in its discretion, in some provinces), but has ample power to use other bases for the computation of average earnings, according to the circumstances of the case, when it seems more favourable to the workman.

In all provinces, in any case where it seems more equitable, the Board may award compensation on the basis of the workman's earnings at the time of the accident.

Mr. Justice Roach, in discussing the subject of average earnings in his 1950 Royal Commission Report, pointed out that it would depend on the circumstances whether the Board would award compensation on the basis of earnings for a 12-month period or on the earnings at the time of the accident.

He also indicated that the Board may deal differently as between temporary disability cases and permanent disability cases.

Mr. Justice Roach stated (p. 32):

I should think that in cases where a workman is off work for a short time due to a temporary disability caused by accident it would only be fair to compensate him by reference to his actual earnings at the date of the accident whether they should turn out to be greater or less than his average earnings provided that it could be reasonably determined that for the period of the lay-off his daily earnings if he had been working would have been the same as at the date of the accident.

If, on the other hand, the period of partial disability is long or if the disability is permanent, it might be grossly unfair to the employee or the employer to fix the scale of compensation or pension by reference to the earnings of the workman at precisely the time of the accident. The remuneration which the workman was earning at that date might be abnormally high due to some temporary or exceptional cause and not at all representative of his normal earnings and in that event to fix his rate of compensation or his pension at that abnormally high rate would work an injustice on the employer. For similar reasons the worker's earnings at the date of the accident might be abnormally low and to fix the amount of the compensation or pension on the basis of his then earnings would work an injustice upon him.

If a workman very shortly before the accident had been promoted to a higher grade of employment carrying a higher wage rate, it would be unfair to him to

fix the amount of his compensation or pension by reference to his average earnings over a twelve-month period.

Similarly the injured workman might have been off work for some period of time during the twelve-month period immediately preceding the accident due to illness or other cause beyond his control and in that event it would be unfair to him to compute the amount of his compensation or pension by reference to his average earnings over a period of time which included the period when he was off work.

The Newfoundland, Nova Scotia, Ontario and Prince Edward Island Acts state that average earnings are to be computed in such a manner "as is best calculated to give the weekly or monthly rate at which the workman was remunerated". The Quebec provision is expressed in more general terms. It states that average weekly or monthly earnings are to be calculated "in such a manner as it [the Commission] deems best suited to the circumstances".

Under these Acts, the Board is directed to compensate for total disability, both permanent and temporary, on the basis of 75 per cent of the average weekly earnings of the workman for the 12 months preceding the injury or any lesser period during which he was in the employ of the employer.

The Ontario Board in 1947 laid down the following rule for determining compensation in cases of temporary total and temporary partial disability:

The earnings used as the wage basis of compensation shall be the average actual earnings for the four weeks or shorter period of employment immediately preceding the accident (omitting any badly broken week) or, if warranted, the nominal weekly wage, provided that where equitable regard may be had to the earnings for the twelve months or shorter period of employment prior to the accident.⁶

The British Columbia and Manitoba Acts state that the average earnings and earning capacity of the workman are to be determined with reference to his average earnings and earning capacity at the time of the accident. That is, the workman is compensated normally on the basis of his present earning capacity and not on the basis of his future potentialities. Under these Acts, average earnings and earning capacity may be calculated in one of three ways "as may appear to the Board best to represent the actual loss of earnings suffered by the workman by reason of the injury". In these provinces the Board may pay disability benefits based on (1) the daily, weekly, monthly or other regular remuneration which the workman was receiving *at the time of the accident*, or (2) the average yearly earnings of the workman *for one or more years prior to the accident*, or (3) the *probable* yearly earning capacity of the workman at the time of the accident.

In British Columbia, according to the Report of the Tysoe Commission of Inquiry (p. 302), temporary total disability is compensated on the basis of the weekly wage which the workman was earning at the time he was injured. This basis is used for the first 13 weeks during

⁶ Roach Royal Commission Report, p. 33.

which the workman is on compensation (except in the case of fishermen and longshoremen). After 13 weeks the workman has his compensation changed to a basis of his average earnings for three months, or alternatively for 12 months, previous to the accident, whichever results in the higher compensation.

In cases of permanent disability, whether total or partial, and in temporary partial disability cases which have progressed to the point where the Board places them on a loss of function basis, the Board usually averages earnings of the workman over one or two years prior to the accident. Emphasizing that a flexible approach is taken in order to favour the workman, the Report stated that the Board might even go back to three years prior to the accident and would not necessarily take the average over the full three years.

The Tysoe Report indicated that the third alternative (the probable yearly earning capacity of the workman at the time of the accident) might be used in cases involving nurses in training and apprentices. In such cases the Board uses the average earnings in the employment which the persons concerned are being trained to enter.

The Ontario Act also makes specific reference to apprentices or persons in the course of learning a trade, occupation, profession or calling whose remuneration is of a nominal nature. The Board may determine the average earnings of any such person at an amount that it considers fair and reasonable, having regard to the average earnings of a fully qualified person engaged in the trade, occupation, profession or calling.

In New Brunswick, average earnings and earning capacity must be calculated on the daily, weekly, monthly or other remuneration which the workman *was receiving at the time of the injury or received previously*, "as may appear to the Board best to represent the actual loss of earnings", unless the workman is under 21 (see p. 14).

The Saskatchewan Board is required to determine the average earnings of the workman over a period of 12 months but is not limited to taking for this purpose the year previous to the accident. The Act states that "average weekly earnings" for purposes of payment of compensation for permanent disability are to be 1/52 of the wages earned in the 12-month period immediately preceding the injury or, at the discretion of the Board, if more advantageous to the workman, 1/52 of the amount earned by the workman in *any* period of 12 consecutive months in the 36 months immediately preceding the injury.

For temporary total disability, compensation is based upon the workman's earnings at the time of the accident (75 per cent of the rate of the workman's remuneration at the time of the injury) unless his average weekly earnings for the year previous to the accident are higher, in which case the average earnings for the year are used. As in permanent disability cases, the Board may select the 12-month period for the computation of average earnings that is most advantageous to the workman.

The Alberta Act states that, for purposes of calculating the amount of disability benefits, average weekly earnings must be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated.

Benefits for temporary disability must be based on the workman's average weekly earnings for the year preceding the accident. Where, in the opinion of the Board, these are not ascertainable, regard may be had to the average earnings of another person in the same grade of employment for the previous 12 months or compensation may be based on the workman's earnings at the time of the accident.

In awarding compensation for permanent disability, the Alberta Board may choose the most beneficial to the workman of three alternatives. Compensation may be a weekly payment equal to 75 per cent, or, in the case of permanent partial disability, a proportionate amount of 75 per cent in accordance with the impairment of earning capacity resulting from the injury, of (1) the average weekly earnings, as determined by the Board, of *workmen* employed at similar work in the same occupation for the *three* years immediately before the first day of January preceding the date of the injury; or (2) the *workman's* average weekly earnings in industries under the Act during the *three* years immediately before the first day of January preceding the date of the injury; or (3) the *workman's* average weekly earnings in industries subject to the Act, as computed in accordance with Section 50, in the 12 months before the accident.

Flexibility is necessary in determining average earnings in order to take care of exceptional cases. Workmen may not be employed for a full year and may move from one employment to another. A workman may have been employed for only a few days or weeks or even a few hours when he met with his injury.

All the Acts except those of Manitoba and New Brunswick contain provisions intended to cover exceptional situations. While these vary to some extent, they are the same in principle, enabling the Board to accept as the basis for calculating average earnings the average of the grade or class of work within which the workman's employment falls.

Most of the Acts provide that where, owing to the fact that a workman has been employed only a short time or was a casual employee, it is impracticable to compute his rate of remuneration as of the date of the accident, compensation may be based on the average weekly or monthly earnings of *another* workman employed in the same grade and class of employment by the same employer during the 12 months previous to the accident. If there is no similar employment, the Board may take as the basis for compensation the earnings during the previous 12 months of a person in the same grade and class of work in the same locality.

The Saskatchewan Act states that, where a workman was not available for employment for a full 12-month period, or where owing to the casual nature of the employment or the terms of the employment, it is impracticable to compute his average weekly earnings according to the usual formula, the Board is to have

regard to the average weekly earnings of other workmen engaged during the 12 months preceding the injury "in the same or similar work in the same or a similar locality and to such other circumstances as it considers to be relevant."

In British Columbia, compensation in such circumstances may be based on the earnings of a person in the same or similar grade or class of employment "during the one or more years or other period previous to the accident." Wage records of other workmen are to be those shown by the records of the Board. In Alberta, such wage records are to be determined by the Board.

The Acts of Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Quebec state clearly that, with respect to the special provision for computation of earnings in case of shortness of service or casual employment, "employment by the same employer" means employment by the same employer in the grade of work in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or other unavoidable cause. Thus, the Board is directed to disregard absences due to illness or other unavoidable cause.

A number of Acts (Alberta, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan) stipulate that any sum which the employer was accustomed to pay the workman to cover special expenses incurred by him by the nature of his employment is not to be counted as part of his earnings.

These Acts also provide for the situation where a workman is employed concurrently by more than one employer. They state that the average earnings of a workman who is working under concurrent contracts of service with two or more employers under which he worked at one time for one employer and at another time for another are to be computed on the basis of what he would probably have been earning (in Quebec, in the opinion of the Commission) if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

COMPENSATION TO WORKMEN UNDER 21

In all provinces, where an accident occurs to a workman under the age of 21, the Board, in fixing the amount of his compensation payment, is empowered to take into consideration the fact that his earnings would probably have increased if he had not been injured. In some provinces, the Board may increase the compensation payment at a later date, in line with the amount of wages the workman would probably have been earning if he had not been injured.

The British Columbia and New Brunswick Acts simply state that, where the workman was under 21 at the date of the accident, and the Board is satisfied that under normal conditions his wages would probably increase, it must take this into account in arriving at his average earnings or earning capacity. In such case compensation would be based on the average earnings in the class of employment in which the minor's wages would probably increase.

The Alberta Act authorizes the Board to increase the workman's compensation on his reaching the age of 21. From that date compensation may be paid on the basis of the earnings at the time of the accident of workmen over 21 employed in a similar occupation.

In Manitoba, the Board has discretion to pay compensation on the basis of the earnings of an average workman aged 21 employed at a similar class of work, or on any lower basis, subject to a minimum payment in the first instance equal to the workman's average earnings at the date of the accident. A payment fixed on any subsequent review may not be less than the amount of the workman's probable average earnings at the date of the review, if he had not been injured.

The Acts of the other provinces stipulate that, where a review takes place more than six months after the accident, compensation may be increased to an amount based on average earnings at the time of the accident deemed to be equal to the workman's probable average earnings at the date of the review, if he had not been injured.

DEATH BENEFITS

Unlike disability benefits, which are based on 75 per cent of earnings, benefits to dependants in fatal cases are monthly payments fixed by law, without relation to the earnings of the deceased workman.⁷

The right of a widow to benefit is not made conditional on her being presumed to be incapable of self-support.

In addition to a monthly pension, a dependent widow or dependent invalid widower receives an immediate lump-sum payment, an allowance for funeral expenses, and a further sum where the workman's body has to be transported a considerable distance for burial.

A monthly allowance is payable for each child to the age limit fixed by law or, in some provinces, for the duration of a child's education. If a child's remaining parent dies, he becomes eligible for the higher monthly payment provided for an orphan.

Invalid children receive the pension specified for a dependent child, regardless of age. In most provinces the allowance is payable as long as they remain invalids or until they die. The Acts of Alberta, Newfoundland and Prince Edward Island stipulate, however, that payments to an invalid child are to be made only so long as the Board considers that the workman would have continued to contribute to the child's support.

A widow's pension is payable for life, unless she remarries. The right to a pension ceases upon her remarriage but she is entitled, in lieu of the pension, to a specified lump-sum payment, equivalent in some provinces to monthly payments for one year, in others to

⁷ In most provinces, however, the total amount of monthly allowances payable to dependants is subject to a maximum, either equal to the average monthly earnings of the workman or 75 per cent of such earnings, depending on the province. Where such a limit is imposed, minimum amounts of compensation are usually fixed for the widow and children (see p. 106).

two years' payments. The children's payments continue as before.

The remarriage allowance payable under the various Acts are set out below.

Alberta	— one year's payments.
Newfoundland	
New Brunswick	
British Columbia	— a sum equal to two years' payments, but not to exceed \$2,500.
Manitoba	— two years' payments.
Ontario	
Quebec	
Saskatchewan	— two years' payments or \$2,000, whichever is lesser.
Nova Scotia	— \$35 a month for 25 months after remarriage.
Prince Edward Island	— \$50 a month for 12 months after remarriage.

In Nova Scotia and Prince Edward Island, the Board may pay the remarriage allowance periodically or in one sum.

The Boards assist with burial expenses up to a specified maximum amount, usually \$250 or \$300 but up to \$600 in Quebec, and, where necessary, pay a further sum for transporting the body, subject to a limit in most provinces ranging from \$100 to \$150. In Alberta, Manitoba and Saskatchewan, compensation may include payment for a burial plot, not exceeding \$50. In British Columbia, up to \$85 may be paid for burial plot or cremation charges.

Widows' (or invalid widowers') pensions range from \$75 to \$122.04 a month. In British Columbia, the pension to a widow was raised to \$115 from January 1, 1965, and made subject to a cost-of-living formula, under which it is to be increased annually by 2 per cent for each rise of 2 per cent in the consumer price index. Under this formula, the pension was increased to \$117.30 from January 1, 1966, and to \$122.04 from January 1, 1967.

In Saskatchewan, the monthly pension of \$110 reverts to a payment of \$75 when the widow or invalid widower reaches the age of 70 years.

The widow's initial lump-sum payment is not determined by any particular formula and varies in amount, with some provinces paying \$200, others \$250, and still others \$300. As of September 1, 1967, a lump-sum payment of \$500 was adopted in Quebec.

Allowances to children with one parent range from \$25 to \$53.06 a month. Payments varying from \$30 to \$80 a month are provided for orphan children. In Saskatchewan, a lump sum not exceeding \$50 may, in the Board's discretion, be paid to each orphan child under 16. The British Columbia Act provides for a graduated scale of children's allowances, and these allowances may be increased yearly under a cost-of-living formula.

In recent years age limits for the payment of children's allowances have been extended in almost all provinces.

In Nova Scotia, compensation is paid to all dependent children to the age of 18, irrespective of school attendance. In New Brunswick, benefits are payable to the age of 21 or until a child ceases to attend school regularly, whichever occurs first. In Quebec, compensation is payable, without any age limit, as long as a child is regularly attending school. For children who are not attending school, the age limit is 18. In British Columbia, compensation is payable to all children under 16, and is continued between the ages of 16 and 21 if a child is regularly attending school, the payment increasing with the age of the child, thus taking into account the increased costs of maintenance and education.

In the other six provinces compensation is payable to the age of 16 but at the discretion of the Board payments may be continued for the purpose of assisting a child to further his education (in Saskatchewan, to the age of 19; in Alberta, Newfoundland and Prince Edward Island, to the age of 21; in Manitoba, until a child is granted a university degree for the first time or completes a course in technical training; and in Ontario, as long as a child is pursuing his studies). In Alberta, payments may be made to the end of the school year in which the child reaches the age of 21.

Parents and other dependants who were wholly or partly dependent on the workman for support may be compensated for their pecuniary loss. Dependants other than widow, invalid widower or children are entitled to an award which in the Board's judgment is reasonable and proportionate to the financial loss suffered as a result of the workman's death, subject, in some provinces, to fixed maximum amounts. Payments in these cases are continued only so long as the Board considers that the workman, if he had lived, would have contributed to the support of the dependant.

The Manitoba Act is unique in providing for a monthly payment to a wholly dependent mother of a deceased workman. This payment, formerly \$75, is now \$100.

There is provision in the British Columbia Act for monthly payments, at the discretion of the Board, to a widow, widower, parent or child who was *not* dependent on the workman's earnings at the time of his death but who had a reasonable expectation of pecuniary benefit from the continuance of the life of the workman. Such payments, not exceeding \$115 a month, may be made for life or for a lesser period but may not exceed, in the whole, \$1,500.

The Acts make provision for allotment of compensation where there are both total and partial dependants, and for the readjustment of payments where a payment to any one of a number of dependants ceases.

A foster mother who takes care of a family of orphans in a manner satisfactory to the Board is entitled to receive monthly payments of compensation as if she were the widow, and is also entitled in most provinces to the lump-sum payment to a widow. Payments to a foster mother cease when all the children of the household cease to be entitled to compensation.

In all but three provinces, the benefits payable to dependants in death cases are subject to a statutory limit expressed in terms of the workman's average earnings.

In Ontario and Saskatchewan, the aggregate of the monthly payments to or for dependants of a deceased workman may not exceed the workman's average earnings, and in Manitoba, Newfoundland, Prince Edward Island and Quebec, the total payments may not exceed 75 per cent of the workman's average earnings, subject to minimum payments in some provinces. The minimum amounts are for the protection of the dependants of workmen with low average earnings. That is, low earnings will not reduce the compensation to widow and children below specified minimum amounts. As an example, in Quebec, although the Act states that the total pensions paid may not exceed 75 per cent of the workman's average earnings, it is stipulated that a widow and one child may not receive less than \$100 a month, a widow and two children not less than \$125, and a widow and more than two children not less than \$150 a month.

The New Brunswick Act provides that the total compensation payable to dependants in death cases may not exceed 75 per cent of \$5,000 a year (the annual wage ceiling).

The Alberta, British Columbia and Nova Scotia Acts do not set any maximum on the aggregate monthly payments to dependants, and a dependent widow and children receive the amounts specified for each, with no statutory limitation.

Under some of the provincial Acts, dependants of a deceased workman who reside outside of Canada may, under certain conditions, be awarded lesser monthly payments than dependants of the same class in Canada. Details of the laws regarding payment of benefits to non-resident dependants are set out on page 80.

Common Law Wife

In six provinces — Alberta, British Columbia, Manitoba, Newfoundland, Ontario and Saskatchewan — a common law wife may receive a widow's pension.

Payment of benefits is authorized, in the Board's discretion, if there is no dependent widow and if the common law wife had lived with the deceased workman for a specified period immediately before his death. The periods differ considerably and are as follows:

Alberta	— 2 years, if there are (one or more) children;
British Columbia	— 7 years;
Manitoba	— 3 years;
Newfoundland	— 2 years, if there are children, 7 years, if there are no children;
Ontario	— 2 years, if there are children, 6 years, if there are no children;
Saskatchewan	— 3 years, if there are children, 6 years, if there are no children.

The Alberta, Manitoba, Newfoundland and Ontario Acts provide that compensation is to be paid to the common law wife until such time as she marries.

In British Columbia, a common law wife in receipt of compensation is eligible for the same benefits as a widow on remarriage.

The New Brunswick Board has stated that a common law wife is acceptable under the Act as the widow and is entitled to the same benefits.

In the other provinces (Nova Scotia, Prince Edward Island and Quebec), while a common law wife is not recognized by the Act, she may be paid the compensation payable to a foster mother, if the Board considers her to be a suitable person to be a foster mother.

The death benefits payable in each province are set out in the table on page 105.

Amount of Widow's Pension

Increases in the amount of the monthly pension payable to widows do not appear to be determined in accordance with any fixed criteria.

The initial Act of Ontario provided for a widow's pension of \$20 a month. The Report of a 1916 British Columbia Committee of Investigation on Workmen's Compensation Laws (the Pineo Report) recommended the sum of \$20 a month as the rate of pension, as it was regarded as "the lowest minimum possible for the purpose of adequate support." This amount was fixed as the widow's pension in the Act of British Columbia (in force from January 1, 1917) and in the Acts of four other provinces. The Acts of Saskatchewan, Quebec and Prince Edward Island, passed more than twenty years later, set a monthly pension of \$40, and the Newfoundland Act, which went into effect on April 1, 1951, set a monthly pension of \$50.

The pension was revised upwards in all provinces as it became insufficient to meet living costs but increases were provided for at varying intervals. While the initial pension may have been fixed as the minimum amount needed for adequate maintenance and support, it is clear that subsequent increases were not proportionate to increases in the cost of living.

Mr. Justice Tysoe's conclusion in his 1966 Report (p. 39) was that the amount of pensions for widows and invalid widowers should be related principally to the cost of providing for basic needs, with proper regard to what industry should reasonably be called upon to pay.

After considering the rise in the cost of living (the consumer price index) over a considerable period of years, increases in wage rates over the same period and past increases in widows' pensions, he had difficulty in finding any sound ratio behind the various and differing increases that had been made. He pointed out that, if he assumed that the pension of \$90 a month adopted in 1959 was adequate and if he took into consideration the fact that the consumer price index had risen by 10 per cent in the period, he would not have found it easy to justify an increase of more than 10 per cent (that is, to \$99 a month).

He was not convinced, however, that the increases made in past years were sufficient to bring the pensions

up to amounts sufficiently high to provide for basic needs. On consideration of all the relevant factors, he recommended an increase from \$90 to \$115 a month.

The approach of Mr. Justice Roach in 1950 in assessing the adequacy of the pensions granted to widows and children was to compare the financial effect on the family in the case where the workman is totally disabled with the effect in the case where he is killed. He considered that the benefits payable to a workman's dependants should be comparable to the pension payable to the workman, if totally disabled, less an amount to cover his maintenance, which would cease to be a charge upon the family after his death.

It is probable that legislators in fixing the flat-rate benefits payable under workmen's compensation laws take as a point of comparison the level of benefits payable under other types of social legislation in Canada.

Suspension or Withholding of Benefits

Once a compensation claim has been allowed, the injured workman and his dependants remain under the continuing supervision of the Board.

As trustee of the Accident Fund and in its role of guardian of the workman or dependant, the Board has wide discretion as to the person or persons to whom compensation is to be paid, and may suspend or withhold or even refuse payment of benefits.

The Alberta, Manitoba, Ontario, Quebec and Saskatchewan Acts provide that, where the Board considers it undesirable to make payments in respect of a child directly to its parent, it may make them to some other person or apply them in such manner as it deems most advantageous for the child.

Similar authority is vested in the Boards of all provinces with respect to minors (persons under the age of 21) or persons of unsound mind. In British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, in such cases the Board may pay the compensation to such persons as in its opinion are best qualified to administer the payments. In the other provinces, where a person entitled to compensation is under 21 or is under any other legal disability, the Board may exercise its discretion according to the circumstances, and pay the compensation in whatever manner it deems best for the workman's or dependant's advantage.

In Newfoundland, Nova Scotia and Prince Edward Island, the Board may refuse to pay compensation to a parent of a child under 14 whose death was caused by an accident occurring while the child was illegally employed by virtue of any statute.

In Ontario, on the other hand, the fact that an employer has employed a minor in contravention of the

law does not affect the minor's claim to compensation, but the employer may be made personally liable for payment of the compensation. There is a similar provision in the Prince Edward Island Act, applying to a child under the age of 15.

In a number of provinces (Alberta, Manitoba, New Brunswick, Ontario, Quebec and Saskatchewan) the Board is authorized to pay the compensation to which a workman is entitled to his wife and children if he has deserted his family and is not providing for their support. In Manitoba, the Board has the further power to divert the compensation or any portion of a compensation award from the workman to the municipality that is partially or wholly supporting the wife or family of the workman.

In certain other circumstances, benefits may be suspended, withheld, or forfeited but the Board in its discretion may assign to the dependants all or part of the compensation otherwise payable to the workman, or, under some Acts, may pay the benefits so withheld to such other person (such as a trustee) as it deems proper.

Compensation may (or must, as the case may be) be withheld in some provinces (Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia and Prince Edward Island) while a person is serving a term of imprisonment or (except in British Columbia) is confined to a mental hospital. The Nova Scotia and Prince Edward Island Acts provide that, where the imprisoned person has committed an indictable offence, compensation may, at the discretion of the Board, be entirely forfeited.

The Board is also authorized in a number of provinces (British Columbia, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island) to withhold benefits if the person entitled to compensation is, in its opinion, leading an immoral or improper life, or is likely to use the money in gambling or otherwise than for the benefit of his dependants.

Some Acts (Manitoba, Ontario, Quebec and Saskatchewan) empower the Board to discontinue payment of benefits to a widow or common law wife on grounds of immoral behaviour, or by reason of the neglect of the children.

A workman loses his right to benefit if he ceases to reside in the province without permission of the Board.

Non-co-operation on the part of the workman with the Board may also lead to reduction or suspension of benefits. In all provinces refusal to undergo a medical examination may entail suspension of benefits until the examination takes place. Compensation may be reduced, or in some cases suspended, in Alberta, British Columbia, Manitoba, New Brunswick and Quebec if the workman persists in practices tending to retard his recovery or refuses to submit to necessary medical and (except in Quebec) surgical treatment

CHAPTER III

Upgrading of Pensions

From time to time the maximum earnings basis and percentage rate of earnings on which compensation for disability is computed and the flat-rate benefits payable to dependent widows, invalid widowers and children of deceased workmen are arised by the legislature in an effort to keep benefit levels in line with the cost of living. When benefits are raised, the question arises as to whether new scales are to be made applicable "across the board", that is, to existing pensions as well as to those granted in the future.

In years past, insofar as pensions to dependent widows, invalid widowers and children were concerned, increases were consistently made applicable to existing pensioners in some provinces; in others, all pensions were brought up to current rates at somewhat irregular intervals. The present policy in all provinces is to make benefit increases applicable to all existing pensions, regardless of the date of the accident.

For the most part, costs of increases in existing pensions have been met from the Accident Fund but in New Brunswick in 1958 the costs of upgrading widows' pensions to the current level of \$50 a month were paid from the provincial treasury, as were the costs of making an increase in widows' pensions from \$50 to \$60 a month applicable to existing pensioners in 1960. Similarly, costs of retroactive increases in widows' and children's pensions¹ in Nova Scotia in 1959 were made a charge on the Consolidated Revenue Fund, in accordance with a recommendation of the McKinnon Royal Commission that the people collectively, and not industry alone, should bear the costs of increases in existing awards.

Until recent years, with two or three exceptions, which are noted below, permanent disability pensions awarded to injured workmen remained at the level in effect at the time of the award, despite repeated requests from organized labour for increases to meet the rising costs of living. The position consistently taken by employers was that the assessments which they pay should not include the cost of increasing pensions to workmen injured in past accidents, some of whom may have been employed in industries that have gone out of existence.

Various Royal Commissions, while recognizing the need for granting relief to disabled workmen in receipt of pensions awarded when wages and the compensation rate were much lower, have held that existing industry should not be required to bear the financial burden resulting from accidents in past years.

In their view, industry had discharged its debt to the injured workman at the time the award was made and should not be required to make upward adjustments in

past awards caused by a changed economic pattern. Consequently, they suggested that, where increases in disability pensions were made to apply to past accidents, the costs should be paid from public funds.

In the past several years a number of the provinces have moved to upgrade "old" disability awards. In most cases the awards have been upgraded at the expense of industry. In a few instances, however, costs have been paid from the Consolidated Revenue Fund.

Where legislatures have provided for increases in existing disability pensions, the usual method adopted has been to direct the Board to recalculate the pension at a higher percentage rate but without making any change in the earnings basis (the workman's average earnings at the time of the accident). Other legislatures have established a minimum payment or floor for awards in respect of past accidents. One province has set minimum average earnings for purposes of calculating permanent partial disability awards. In 1965 the British Columbia Legislature put into effect a new principle, the tying of pension payments to the cost of living. Disabled workmen in receipt of pensions based on earlier awards were made eligible for adjustments in their pensions in line with increases in the consumer price index.

STEPS TO INCREASE PAST AWARDS

The steps which have been taken in the various provinces to increase past disability awards, beginning with Nova Scotia in 1944, are detailed below.

In Nova Scotia, the compensation rate, which was set at 55 per cent when the Act was enacted in 1915, was raised to 60 per cent in 1929 and to 66 2/3 per cent in 1938. On neither occasion was the increased rate applied to existing pensioners. In 1944 the Legislature provided that any person then receiving a pension at the rate of 55 or 60 per cent of average earnings was to be entitled to compensation at the rate of 66 2/3 per cent.

Saskatchewan made a similar change in 1945, when the Legislature increased the compensation rate from 66 2/3 to 75 per cent. All disability pensions awarded from the time the Act went into effect in 1930 were recalculated on the basis of 75 per cent of average earnings.

In 1949 the Nova Scotia Legislature set minimum average earnings for purposes of calculating permanent partial disability awards. It provided that, where disability as determined by the Board was 25 per cent or more, average earnings were to be taken as not less than \$18.75 a week. This amendment was made applicable to all permanent partial disability cases, regardless of when the injury occurred.

In 1954 British Columbia provided for increases for those injured before March 18, 1943. (On that date the ceiling on earnings was raised to \$2,500). The formula laid down by the Legislature was that the pensions of

¹ Including widows' and children's pensions under Part III (see p. 106)

workmen injured before March 18, 1943, were to be recalculated at a compensation rate of 66 2/3 per cent, instead of 55 or 62 1/2 per cent, as the case might be, and on their actual average earnings at the time of the accident, subject to a minimum of \$2,000 and a maximum of \$2,500 per annum. Thus, pensions could be recomputed on both a higher percentage rate and a higher earnings basis, and in no case could a totally disabled workman receive less than 66 2/3 per cent of \$2,000 per annum. These pension increases took effect from January 1, 1955. In 1955 the increases were made applicable also to pension payments awarded on or after January 1, 1955, for injuries suffered by workmen before March 18, 1943.

In 1960 and 1961 Nova Scotia again increased disability pensions in respect of past accidents, providing that all awards that had been calculated at the rate of 66 2/3 or 70 per cent of average earnings were to be recomputed at the rate of 75 per cent. The upgrading applied to permanent partial disability pensions payable in respect of accidents occurring before April 1, 1959, when the 75-per-cent compensation rate was adopted, and to temporary total, temporary partial and permanent total disability compensation payable on May 1, 1961. The new awards were calculated at the higher rate on actual average earnings at the time of the accident not exceeding the ceiling placed on annual earnings at the time. Permanent total disability pensions were also made subject to an increased minimum payment, effective from May 1, 1961.

The Legislature provided that the costs of the increased awards to all permanent partial disability pensioners, payable from May 1, 1960, were to be defrayed from the Consolidated Revenue Fund. Increased payments in permanent total disability cases and with respect to temporary total or temporary partial disability claims were paid from the Accident Fund.

As of the same date, awards of workmen disabled by silicosis or coal miners' pneumoconiosis were upgraded to the rate payable from April 1, 1959 (75 per cent of earnings, subject to a \$3,600 ceiling).

In New Brunswick, the pension awarded to a disabled worker at the time of his injury remained unchanged, irrespective of statutory increases, until 1962. In that year the Legislature provided for the review of all existing permanent disability awards, laying down a minimum payment of \$150 a month. The Act was amended to state that, beginning from January 1, 1963, the compensation payable in the case of any permanent total disability award resulting from an accident which occurred between April 26, 1918, when the Act first went into effect, and January 1, 1959, when a 75-per-cent compensation rate was adopted, should be the compensation payable immediately before January 1, 1963, or \$150 a month, whichever was greater.

Permanent partial disability awards resulting from accidents occurring in the period between May 11, 1940, and January 1, 1959, which diminished the earning capacity of the workman by more than 15 per cent were recalculated. The Board was authorized to pay compensation on a scale established by it based on 75 per

cent of the workman's average earnings at the time of the accident or 75 per cent of \$150 a month, whichever was greater. Thus, as in other provinces, the pensions of disabled workers were increased by the application of a higher percentage rate than that prevailing when the award was made.

The Board was also directed to review claims arising from accidents which occurred between April 26, 1918, and May 11, 1940, the date on which a limit on the aggregate amount of compensation payable in permanent partial disability cases was removed. In any such case where permanent partial disability compensation was at one time payable to an injured workman, and the Board considered that his earning capacity was seriously impaired, it was authorized to reopen the claim and award whatever monthly sum it considered just in view of his continuing partial disability.

Quebec increased earlier awards for disability in 1964 and again in 1967.

In 1964 the Board was authorized to increase existing permanent total and permanent partial disability awards arising from accidents that happened in the period between September 1, 1931, when the Act first went into effect, and January 1, 1960. Beginning from September 30, 1964, all such payments were increased by a specified percentage, varying with the period in which the accident occurred.

The periods in respect of which the different percentages applied corresponded to the dates of successive changes in the ceiling on annual earnings, the ceiling having risen from \$2,000 to \$2,500 in 1947, to \$3,000 in 1952, to \$4,000 in 1955, and to \$5,000 on January 1, 1960.

The percentages by which former awards were increased were as follows:

Period in which accident occurred	Per cent
September 1, 1931 to July 1, 194760
July 1, 1947 to February 1, 195240
February 1, 1952 to January 1, 195527
January 1, 1955 to January 1, 196010

In 1967, in a similar amendment, the Legislature provided for further increases in disability pensions. The amendment set out in a schedule covering the years 1931 to 1965, inclusive, the percentages by which pensions were to be increased, as of September 30, 1967, the percentages varying with the year in which the accident occurred. In fixing these rates, which vary from a 40-per-cent increase applicable to pensions awarded by reason of accidents occurring in the early years of operation of the Act to a low of 1.1 per cent, consideration was given to the increases granted in 1964 and the variations in the cost of living since 1931.

In Manitoba, a higher minimum payment for permanent total disability (\$150 a month instead of \$25 a week or earnings, if less) was established from June 1, 1964, and the Legislature provided that all disability awards in respect of injuries that had occurred before August 5, 1959, should be upgraded on the basis of the same minimum payment. (On August 5, 1959, amendments to the Act resulting from the Turgeon Royal

Commission Inquiry went into effect, including an increase in the minimum payment for total disability).

Under the formula laid down, a person who was receiving compensation for permanent total disability immediately before June 1, 1964, became entitled to a payment after that date of not less than \$150 a month, subject to the limitation that the adjusted pension could not be more than 150 per cent of the compensation previously payable.

Where a person was receiving compensation for permanent partial disability immediately before June 1, 1964, his pension, as upgraded, could not be less than the percentage of \$150 a month corresponding to his degree of disability as determined by the Board, subject to the limitation that the adjusted pension could not be more than 150 per cent of the compensation previously payable.

In 1965 Ontario gave legislative recognition to the fact that awards made in accordance with earlier scales of compensation had become inadequate. All permanent disability awards for accidents which occurred before January 1, 1950 (when the compensation rate was raised to 75 per cent) were recalculated on the basis of 75 per cent of earnings (the workman's average earnings at the time of the accident). All payments accruing after July 1, 1965, were increased accordingly. The recalculated awards were also subject to the increased minimum payment provided for in 1965 (\$150 a month or average earnings, if less, with an absolute minimum of \$100 a month).

In a 1966 amendment to the Act, the Nova Scotia Legislature again provided for increases in respect of permanent partial disability awards. It declared that, in cases of disability determined by the Board to be 15 per cent or more, average earnings for purposes of computing compensation were to be deemed to be not less than \$160 a month. This amendment, applicable from July 1, 1966, to all awards based on average earnings of less than \$160 a month, was far-reaching with respect to old awards.

In 1967 the British Columbia Act was amended to raise the minimum payment of all persons in receipt of a permanent total disability pension on April 1, 1967, to \$150 a month. Half the cost of these increases is being paid from the Consolidated Revenue Fund.

To indicate the intervals at which changes in the level of benefits were made by the legislatures, a summary of the major benefit changes since the inception of the Acts in three provinces appears on pages

NEW APPROACH

In 1965 British Columbia made provision for the incorporation of a cost-of-living formula in pensions to dependants of deceased workmen and in permanent disability awards, thus removing the need to increase pensions from time to time by legislative action.²

The amendments to the Act, made by Order in Council of November 2, 1965, and providing for the tying of pensions and other compensation payments to the cost of living, were recommended by Mr. Justice Tysoe in his Royal Commission Report.

The Tysoe Report (p. 50) pointed out that the theory behind the establishment of all pension rates is that the pensions create sufficient income to meet the presumed economic loss or the basic economic needs of the pensioner, and that justice demands that pensions to a workman for disability or to his dependants for death be raised from time to time to keep them in some reasonable relation to the cost of living.

Mr. Justice Tysoe's solution of the problem was that all pensions awarded in the future should be tied to the cost of living, and his recommendation was that pensions to workmen for permanent disabilities and pensions to dependent widows, invalid widowers and children should be increased by 2 per cent for each rise of 2 per cent in the consumer price index (published by the Dominion Bureau of Statistics), using the year 1964 as a base equal to 100. So far as pensions and payments to widows, invalid widowers and children were concerned, the recommendation was intended to apply to the setting of the initial rate of the pensions and payments as well as to subsequent increases.

In Mr. Justice Tysoe's view, tying pensions to the cost of living presented no serious problems with regard to pensions awarded in the future. In such cases, the pension would fluctuate in amount in accordance with a statistically predetermined formula and would be provided by existing industry. He regarded it as true compensation, provided by the very industrial group that ought to provide it and with no element of social welfare about it.

To apply the principle to existing pensions was, however, a different matter. In his opinion, payment of the initial pension constituted a full and complete compliance by industry with its obligation to pay compensation, and he did not consider it fair that industry as presently constituted should be called upon to make good the cost of earlier industry's accidents. He could not recommend retroactive increases in the compensation rate or in the ceiling on annual earnings at industry's expense.

Nevertheless, he felt that, because of their economic need, dependent widows, widowers and children of deceased workmen and disabled workmen in receipt of pensions based on earlier awards should have the benefit of such increases as were granted to new pensioners.

face the necessity of living on fixed incomes for the future. The Commissioner was of the opinion that industry should not be required to do more than provide future pensions funded upon the basis of present-day wages.

In the discussion of the 1967 amendments to the Quebec Act in the Legislative Assembly, the Minister of Labour for Quebec stated that the Government had considered the tying of pensions to the cost of living but had not been willing to impose the additional costs on employers at that time, in view of other amendments which would substantially increase employers' costs. He indicated that the Government had not abandoned the idea.

² A proposal made to the McGillivray Commission in Ontario that pension awards should be tied to the consumer price index was rejected, on the ground that the injured workman is in no different position from that of any other pensioners who

He recommended, therefore, that the increase to \$115 a month in the widow's pension, the extension of the age limits for children and the increases in children's allowances be made applicable to all persons in these groups then in receipt of pensions and allowances, and that their pensions be tied to the cost of living in the same manner as with newly-granted pensions and payments.

He further recommended that the pensions of permanently disabled workmen, whether totally or partially disabled, should be tied to the cost of living in like manner and on the same basis, with 1964 as the basic year, as the existing pensions of widows and invalid widowers. Thus, he stated, they would receive at least some benefit in the future.

While Mr. Justice Tysoe considered that it was perfectly logical that industry should pay the whole cost of pensions granted in the future and tied to the cost of living, he was unable to reach the conclusion that industry should bear the whole cost of making upward adjustments in past awards. In his view, these increases in existing pensions and allowances came more truly within the ambit of social welfare than within the ambit of workmen's compensation, and he agreed with the "well-grounded" principle that the workmen's compensation scheme should not be made into a vehicle for social welfare at industry's expense. He pointed out that such relief as had been granted in the past had been provided by industry alone.

However, "endeavouring to be realistic, and being conscious of past events and of the precedents that have been set", he felt that, unless industry bore some part of the cost of any increases in existing pensions, such increases were not likely to be granted.

Mr. Justice Tysoe recommended, therefore, that the cost of all increases in existing pensions and allowances should be borne one-half by industry and one-half by society as a whole. He was able to come to the conclusion that industry should bear a one-half share of the cost partly because of the existence of a considerable surplus in the Reserve Fund for Pensions, and he suggested that the surplus should be used to help pay industry's share. Since the bulk of the surplus had been provided by industry of previous years, there was less infringement, he felt, of the general principle that present-day industry should not be charged with any part of the cost of accidents arising at earlier times.

Mr. Justice Tysoe considered that, if his recommendations were implemented, pensions and allowances would be on as fair and proper a basis as industry could reasonably be expected to provide, and that henceforth changes in the purchasing power of the pension dollar would not be detrimental to pensioners because of the adjustments that would be made in accordance with variations in the cost of living.

As indicated above, amendments to the Act in accordance with the Tysoe recommendations made the new cost-of-living formula applicable not only to pensions to be awarded in the future but also to existing pensions.

Increased pensions and allowances to widows, invalid widowers and children and the extension of the age

limits for the payment of allowances to dependent children were given retroactive effect to January 1, 1965, and were made applicable to all persons in these groups in receipt of pensions at that date.

Pensions and allowances to widows, invalid widowers and children and pensions of permanently disabled workmen were tied to the consumer price index, in accordance with the Tysoe formula.

The minimum payment for temporary total and permanent total disability was increased from \$25 to \$30 a week or earnings, if less, effective from January 1, 1965. The amendments also provided that, where disability pensions were increased as a result of a 2 per cent rise in the consumer price index, the minimum payment specified in the Act for temporary total and permanent total disability should be increased by the same percentage.

The amending Order in Council of November 2, 1965, also stated that 50 per cent of the present and future costs of the increases in awards which arose out of accidents or deaths that occurred before January 1, 1966, was to be paid from the Consolidated Revenue Fund of the province.

In accordance with the formula, widows' pensions and allowances to dependent children rose by 2 per cent from January 1, 1966, and by 4.04 per cent from January 1, 1967. Disability pensions were increased by the same percentages. The minimum weekly compensation for total disability was increased as a result of the cost-of-living factor to \$30.60 in 1966 and to \$31.84 in 1967.

MINIMUM PAYMENT FOR TOTAL DISABILITY

All provinces fix a minimum payment for temporary total disability, and all except New Brunswick set a minimum payment for permanent total disability.

The minimum is usually stated as a fixed amount or the workman's average earnings, if less. The minimum payment for temporary total disability ranges from \$20 to \$35 a week or average earnings, if less. For permanent total disability the minimum payment ranges from \$20 a week to \$150 a month or, in all provinces but Nova Scotia and Saskatchewan, average earnings, if less.

In stating that, where a workman's average earnings are less than a fixed amount, he is to receive as minimum compensation an amount equal to his average earnings, the Legislatures of most provinces have stipulated that industry should not, under any circumstances, be required to provide compensation in excess of a workman's average earnings, no matter how low they may be.

Nova Scotia and Saskatchewan, however, have for many years set a minimum payment for permanent total disability which applies in all cases even if the actual average earnings of the workman are less than that amount.

The purpose of setting a minimum is to ensure that compensation is adequate to provide for a workman's

basic needs, and amendments to increase the minimum to a more socially acceptable level have been enacted at intervals in all provinces.

Increases in the minimum payment for permanent total disability, when made applicable to existing pensions, have some effect in upgrading pensions of small amount.

For many years Nova Scotia and Saskatchewan have made it a practice to apply any increase in the minimum for permanent total disability to existing pensions.

In Manitoba in 1959 workmen receiving compensation in respect of past accidents were made eligible for an increase in the minimum payment for permanent total disability. In 1964 the minimum payment for permanent total disability was increased to \$150 a month. This minimum payment was, subject to certain limitations, made applicable to all persons in receipt of permanent disability pensions by reason of accidents occurring before August 5, 1959. These amendments were described at page

Increases in the minimum payment for permanent total disability were made applicable to existing as well as future pensions in British Columbia and Ontario in 1965 and in Newfoundland in 1967.

An amendment in British Columbia, effective from April 1, 1967, set a minimum pension of \$150 a month for all workmen in receipt of a permanent total disability pension as of that date. Fifty per cent of the costs of this increase is to be paid from the Consolidated Revenue Fund.

So far as the minimum for temporary total disability is concerned, increases have regularly been applied in Saskatchewan to persons receiving time-loss compensation before as well as after the effective date of the amendment. Amendments increasing the minimum in Manitoba and Nova Scotia in 1959, in British Columbia from January 1, 1965, in Ontario in 1965 and in Newfoundland in 1967 were also made applicable in respect of earlier accidents.

RECURRENCE OF DISABILITY

Since 1953 seven provinces have provided in their legislation that, in the event that a workman has to lay off work and is entitled to temporary compensation as a result of the recurrence of a disability due to an earlier industrial accident, his compensation is to be based on his current earnings rather than on his earnings at the time of the original accident. Four of the Acts stipulate, however, that a specified period of time must have elapsed since the original injury. The effect of the Alberta provision, which covers a similar situation, is to entitle a workman to the current minimum payment for total disability.

The Saskatchewan Act was amended in 1953 to provide that, if an injured workman had returned to work and afterwards suffered a temporary recurrence of his disability, compensation was to be based on his weekly earnings at the time of the original accident or on his average weekly earnings during the 12 months preceding the recurrence of the disability, whichever was greater.

The Nova Scotia provision, enacted in 1965, is like that of Saskatchewan but it is applicable only to a recurrence of a disability which occurs more than five years after the original accident.

A new subsection was added to the British Columbia Act in 1959 providing that a workman who suffered a recurrence of a disability after April 1, 1959, as a result of an accident which occurred before December 1, 1949, was to be paid compensation for his temporary total or partial disability on the basis of 75 per cent of his current average earnings, up to a maximum of \$5,000. Thus, the compensation payable while the workman was disabled from such recurrence was based on his current earnings and computed according to the current scale of benefits. In this case the provision applied to the recurrence of a disability after a period of more than nine years.

In line with a recommendation of a special legislative committee, the Alberta Legislature enacted a provision in 1961 to ensure that a workman in receipt of a permanent partial disability pension who later became entitled to temporary total compensation during a period of further treatment in respect of the same injury should be paid not less than the current minimum payment for total disability. The amendment provided specifically that, if more than a year had elapsed from the date on which the permanent partial disability award was made, and the payments the workman would receive as temporary compensation and permanent partial disability pension were together less than \$5 a day, the workman should be paid whatever additional sum was necessary to bring his total compensation to \$5 a day. (The current minimum payment of compensation for total disability under the Alberta Act is \$35 a week).

An amendment to the New Brunswick Act, effective from January 1, 1963, provided that, where a claim is reopened for weekly compensation after a period of at least two years, the Board may in its discretion pay the workman compensation computed on his average earnings at the time of the reopening of the claim instead of at the date of the accident, and on the scale in effect at the time of the reopening of the claim.

The Quebec provision passed in 1963 and the Ontario provision passed in 1964 are similar, except that the former relates to a workman who is temporarily or permanently disabled as a result of an aggravation of an injury which had occurred more than three years earlier. The Ontario provision applies, regardless of when the original disability occurred. Both Acts state that a workman who has suffered a permanent disability due to an earlier accident and who later becomes entitled to further payments of temporary compensation is to be paid compensation on the basis of his current average weekly earnings, if they are higher than his earnings at the time of the original accident. The Quebec Act makes it clear that the degree of disability for which the workman had already been compensated must be deducted.

The Manitoba Legislature enacted an amendment to the Act in 1966 providing that benefits payable to a workman suffering from a recurrence of a disability due to an earlier industrial injury are to be based on his

current earnings, if they are higher than his average earnings at the time of the original injury.

The Act states that, if the workman is not receiving a permanent disability pension in respect of the original injury, disability benefits in respect of the recurrence are to be based on his average earnings at the time of the recurrence.

If the workman is receiving a permanent disability pension, any additional benefits payable are to be based on the percentage of disability not covered by the pension and are to be calculated on the basis

of his average earnings at the time of the recurrence.

Additional disability benefits are to be calculated on the scale current at the time of the recurrence of the disability.

The amendment provided further that, if at the time of the recurrence the workman was in the employment of an employer in a different class from the one to which his employer at the time of the original injury belonged, the Board is to allocate the cost of the recurrent disability in such manner as it considers equitable in the circumstances.

Summary of Major Benefit Changes Since Inception of Acts

ONTARIO

Percentage of Earnings for Computation of Compensation

- 55% — January 1, 1915 — June 30, 1920.
- 66 $\frac{2}{3}$ % — effective July 1, 1920.
- 75% — effective January 1, 1950.

Ceiling on Annual Earnings

- \$2,000 — January 1, 1915 — June 30, 1943.
- \$2,500 — effective July 1, 1943.
- \$3,000 — effective January 1, 1950.
- \$4,000 — effective January 1, 1952.
- \$5,000 — effective January 1, 1957.
- \$6,000 — effective July 1, 1963.

Maximum Weekly Payment for Total Disability

- \$21.15 — to June 30, 1920.
- \$25.64 — effective July 1, 1920.
- \$32.05 — effective July 1, 1943.
- \$43.27 — effective January 1, 1950.
- \$57.69 — effective January 1, 1952.
- \$72.11 — effective January 1, 1957.
- \$86.54 — effective July 1, 1963.

Minimum Payment for Permanent Total Disability

- \$12.50 a week or earnings, if less — effective July 1, 1920.
- \$100 a month or earnings, if less — effective March 31, 1947.
- \$130 a month or earnings, if less — effective July 1, 1964.
- \$150 a month or earnings, if less, — effective July 1, 1965 (made applicable to all existing pensions).

Widow's Monthly Pension

- \$20 — to April 23, 1919.
- \$30 — effective April 24, 1919.
- \$40 — effective July 1, 1920 (made applicable to all existing pensions).
- \$45 — effective April 14, 1943.
- \$50 — effective March 31, 1947.

\$50 — effective July 1, 1948 (made applicable to all existing pensions).

\$75 — effective April 2, 1953.

\$75 — effective April 1, 1960 (made applicable to all existing pensions).

Children's Monthly Allowance

- (Maximum of 4) \$5 — to April 23, 1919.
- \$7.50 — effective April 24, 1919.
- (No maximum) \$10 — effective July 1, 1920 (made applicable to all existing pensions).
- \$12 — effective March 31, 1947.
- \$12 — effective July 1, 1948 (made applicable to all existing pensions).
- \$25 — effective April 2, 1953.
- \$25 — effective April 1, 1960 (made applicable to all existing pensions).
- \$40 — effective July 1, 1963 (made applicable to all existing pensions).

BRITISH COLUMBIA

Percentage of Earnings

- 55% — January 1, 1917 — December 31, 1922.
- 62 $\frac{1}{2}$ % — effective January 1, 1923.
- 66 $\frac{2}{3}$ % — effective January 1, 1939.
- 70% — effective April 1, 1952.
- 75% — effective April 14, 1954.

Ceiling on Annual Earnings

- \$2,000 — January 1, 1917 — March 17, 1943.
- \$2,500 — effective March 18, 1943.
- \$3,600 — effective April 1, 1952.
- \$4,000 — effective April 14, 1954.
- \$5,000 — effective March 20, 1959.
- \$6,600 — effective November 1, 1965.³

³ The Board is permitted to increase the ceiling by \$1,000 when its records for a calendar year indicate that not less than 45 per cent of workmen whose claims for time-loss compensation were allowed during the year earned more than the maximum, and not less than 20 per cent earned more than \$1,000 in excess of the maximum.

(Benefit Charges, B.C., continued)

Maximum Weekly Payment for Total Disability

\$21.15 — to December 31, 1922.
\$24.04 — effective January 1, 1923.
\$25.64 — effective January 1, 1939.
\$32.05 — effective March 18, 1943.
\$48.46 — effective April 1, 1952.
\$57.69 — effective April 14, 1954.
\$72.11 — effective March 20, 1959.
\$95.19 — effective November 1, 1965.

Minimum Payment for Permanent Total Disability

\$5 a week or earnings, if less — effective January 1, 1917.
\$10 a week or earnings, if less — effective March 23, 1935.
\$12.50 a week or earnings, if less — effective March 18, 1943.
\$15 a week or earnings, if less — effective April 1, 1952.
\$25 a week or earnings, if less — effective April 1, 1955.
\$30 a week or earnings, if less — effective January 1, 1965 (made applicable to all existing pensions—minimum compensation tied to the consumer price index).
\$30.60 a week or earnings, if less — effective January 1, 1966⁴.
\$31.84 a week or earnings, if less — effective January 1, 1967⁴.
\$150 a month — effective April 1, 1967, and made applicable only to existing permanent total disability pensions as of that date.

Widow's Monthly Pension

\$20 — to December 31, 1919.
\$35 — effective January 1, 1920.
\$40 — effective January 1, 1939.
\$50 — effective May 1, 1948 (made applicable to all existing pensions).
\$75 — effective April 1, 1952 (made applicable to all existing pensions).
\$90 — effective March 20, 1959 (made applicable to all existing pensions).
\$115 — effective January 1, 1965 (made applicable to all existing pensions — pension tied to the consumer price index).
\$117.30 — effective January 1, 1966⁵.
\$122.04 — effective January 1, 1967⁶.

Children's Monthly Allowance

(Maximum of 4) \$5 — to December 31, 1919.
\$7.50 — effective January 1, 1920.
\$10 — effective March 18, 1943.
(No maximum) \$12.50 — effective May 1, 1948 (made applicable to all existing pensions).
\$20 — effective April 1, 1952 (made applicable to all existing pensions).
\$25 — effective April 1, 1955 (made applicable to all existing pensions).
\$35 — effective March 20, 1959 (made applicable to all existing pensions).
\$40 — effective January 1, 1965 (made applicable to all existing pensions — pensions tied to the consumer price index).
(under 16 years) 1, 1965 (made applicable to all existing pensions — pensions tied to the consumer price index).
\$45 (16–18)
\$50 (18–21)

\$40.80 (under 16 years) effective January 1, 1966.⁷
\$45.90 (16–18)
\$51 (18–21)
\$42.45 (under 16 years) effective January 1, 1967.⁸
\$47.75 (16–18)
\$53.06 (18–21)

NOVA SCOTIA

Percentage of Earnings

55% — January 1, 1917 — December 31, 1929.
60% — effective January 1, 1930.
66 2/3% — effective January 1, 1938.
70% — effective April 1, 1956.
75% — effective April 1, 1959.

Ceiling on Annual Earnings

\$1,200 — January 1, 1917 — December 31, 1937.
\$1,500 — effective January 1, 1938.
\$2,000 — effective March 29, 1945.
\$2,500 — effective May 1, 1949.
\$3,000 — effective April 10, 1952.
\$3,600 — effective April 1, 1959.
\$4,200 — effective May 1, 1962.
\$5,000 — effective May 1, 1966.

⁴ Increased by 2 per cent in line with each 2 per cent rise in the consumer price index.

⁵ Increased by 2 per cent in line with a 2 per cent rise in the consumer price index during 1965.

⁶ Increased by 4.04 per cent as a result of changes in the consumer price index during 1966.

⁷ Increased by 2 per cent in line with a 2 per cent rise in the consumer price index during 1965.

⁸ Increased by 4.04 per cent as a result of changes in the consumer price index during 1966.

(Benefit Charges, Nova Scotia, continued)**Maximum Weekly Payment for Total Disability**

\$12.69 — to December 31, 1929.
 \$13.85 — effective January 1, 1930.
 \$19.23 — effective January 1, 1938.
 \$25.64 — effective March 29, 1945.
 \$32.05 — effective May 1, 1949.
 \$38.46 — effective April 10, 1952.
 \$40.38 — effective April 1, 1956.
 \$51.92 — effective April 1, 1959.
 \$60.58 — effective May 1, 1962.
 \$72.11 — effective May 1, 1966.

Minimum Payment for Permanent Total Disability

\$5 a week or earnings, if less — effective May 9, 1917.
 \$6 a week — effective May 2, 1934.
 \$8 a week or earnings, if less — effective January 1, 1938.
 \$10 a week or earnings, if less — effective April 6, 1944.
 \$12.50 a week or earnings, if less — effective March 29, 1945.
 \$12.50 a week — effective April 24, 1948.
 \$15 a week — effective May 1, 1949 (made applicable to all existing pensions).
 \$57 a month — effective May 1, 1950 (made applicable to all existing pensions).
 \$85 a month — effective April 1, 1952 (made applicable to all existing pensions).
 \$100 a month — effective April 1, 1956 (made applicable to all existing pensions).

Minimum, applicable only to a workman who at the time of the award had more than one dependent child under 16, equal to the amount of compensation that would be payable to a widow with the same number of dependent children under 16 — effective May 1, 1960⁹.

Benefit Charges, Nova Scotia, concluded

\$110 a month — effective May 1, 1961 (made applicable to all existing pensions).
 \$125 a month — effective July 1, 1966 (made applicable to all existing pensions).

Widow's Monthly Pension

\$20 — to September 30, 1920.
 \$30 — effective October 1, 1920 (made applicable to all existing pensions).
 \$40 — effective May 1, 1943 (made applicable to all existing pensions).
 \$50 — effective May 1, 1948 (made applicable to all existing pensions).
 \$60 — effective April 1, 1959 (made applicable to all existing pensions).¹⁰
 \$75 — effective May 1, 1962 (made applicable to all existing pensions).
 \$90 — effective July 1, 1965 (made applicable to all existing pensions).

Children's monthly allowance

(Maximum of 4) \$5 — to September 30, 1920.
 \$7.50 — effective October 1, 1920 (made applicable to all existing pensions).
 \$10 — effective May 1, 1943 (made applicable to all existing pensions).
 \$12.50 — effective May 1, 1949 (made applicable to all existing pensions).
 \$15 — effective April, 1951.
 \$20 — effective May 1, 1953 (made applicable to all existing pensions).
 (Maximum of 5) \$20 — effective April 1, 1956 (made applicable to all existing pensions).
 \$22.50 — effective April 1, 1959 (made applicable to all existing pensions).¹⁰
 (No maximum) \$22.50 — effective May 1, 1960 (made applicable to all existing pensions).
 \$25 — effective May 1, 1962 (made applicable to all existing pensions).
 \$30 — effective July 1, 1965 (made applicable to all existing pensions).

⁹ This minimum is payable so long as more than one of the children are dependent on the workman and under the age of 16. Costs of the increases in respect of claims arising before May 1, 1960, are paid from the Consolidated Revenue Fund of the province.

¹⁰ Costs of increases in widows' and children's pensions for claims prior to April 1, 1959, are defrayed from the Consolidated Revenue Fund of the province.

CHAPTER IV

Medical Aid

A workman who suffers personal injury by accident arising out of and in the course of employment in an industry subject to the Act is entitled to all necessary medical aid. Medical aid and allied benefits are provided for as long as needed, without limitation as to amount, regardless of a waiting period.

As the primary objective of the compensation process is the rehabilitation of the injured workman, the Boards seek to ensure that every injured workman receives the best possible medical care.

Medical aid is provided or arranged by the Board or as it may direct or approve, that is, all medical aid is subject to the Board's direct supervision and control.

Included in the term "medical aid" are medical, surgical and dental care, hospitalization and skilled nursing services, medicines, prosthetic appliances, including their maintenance, and the replacement and repair of dentures and eyeglasses. Matters not specifically mentioned in the Act are within the discretion of the Board.

The Acts state that the Board has full discretion as to the necessity, character and sufficiency of any medical aid furnished. Any questions or disputes are to be determined by the Board.

All medical aid costs in industries within the collective liability system are paid from the Accident Fund. In Schedule 2 industries in Ontario and Quebec, in which the employer is individually liable, medical aid costs are paid by the employer to the Board for payment.

An employer is forbidden to collect or retain any contribution from a workman towards the expenses of medical aid, under penalty of a fine (not more than \$50 in eight provinces; not less than \$25 and not more than \$100 in Alberta; not more than \$500 in British Columbia). He is also liable, on order of the Board in six provinces, to reimburse the workman treble the amount of the sum collected from him. In British Columbia, Manitoba and New Brunswick, he is liable to repay the workman any sum the latter has been required to pay in contravention of the statute.

In six provinces medical aid may include, in the discretion of the Board and subject to its supervision and control, treatment by practitioners of various healing arts who are registered under the applicable law of the province concerned. The Acts entitle injured workmen to the services of the following:

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|------------------|-------------------------------------------------------------------------------------------------------|
| British Columbia | — qualified practitioners (naturopathic physicians, dentists, chiropractors and chiropodists); |
| Ontario | — drugless practitioners (chiropractors, masseurs, osteopaths and physiotherapists) and chiropodists; |
| Manitoba | — osteopaths and chiropractors; |

- | | |
|---------------|------------------------------------------------------------------------------|
| New Brunswick | — chiropractors; |
| Alberta | — persons licensed under provincial law to practise any of the healing arts. |
| Saskatchewan | |

In Alberta, Nova Scotia and Ontario, a helplessness allowance is payable, at the discretion of the Board, if a workman requires attendance or other services because of permanent total disability. In Nova Scotia, the allowance may not exceed \$40 a month.

Except in New Brunswick, employers are required, at their own expense, to furnish transportation for an injured workman from the scene of the accident to a doctor, a hospital or his home, as the case may be. In New Brunswick, the employer must provide transportation for the purpose of getting necessary medical care but the cost is paid from the Accident Fund. In Newfoundland, Nova Scotia and Prince Edward Island, if an employer fails to provide a conveyance, he is liable to pay to the Board double the cost of transporting the workman. In New Brunswick, an employer failing to do so is liable to a penalty not exceeding \$20.

To take an example, the British Columbia First Aid Regulations require every employer to keep available, at the nearest point of access to each job site or within 20 minutes' travelling time, suitable speedy transportation by land, air or water, with competent attendant, to the nearest doctor or hospital, or both. Where deemed necessary by the Board, a properly equipped ambulance must be maintained at the operation or project. When an ambulance is used, a first aid attendant, in addition to the driver, must accompany the injured workman.

After the initial transportation to hospital, doctor or home, any further transportation of the injured workman, if authorized by the Board, is paid for from the Accident Fund.

In three provinces — Alberta, British Columbia and Newfoundland — the Board may make a daily subsistence allowance to a workman when, under its direction, he is undergoing treatment at a place other than that in which he resides. In Alberta, the Board is authorized to pay \$8 a day for the first seven days of treatment; for any further treatment, it may pay \$6 a day if the workman is maintaining a home with one or more dependants, or \$4.50 a day if he is not maintaining a home elsewhere. No amount is specified in the British Columbia and Newfoundland Acts.

The Boards of all provinces provide injured workmen with artificial members and prosthetic appliances required as a result of the accident. Workmen are entitled to have such appliances kept in repair or replaced when deemed necessary by the Board or, in Alberta, British Columbia and Manitoba, as long as disability continues.

The Acts of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan also give the Board authority

to replace and repair artificial members or appliances that are damaged in an accident arising out of and in the course of employment. The Ontario Act provides further that, where a workman is unable to work because of such damage, he is entitled to compensation as though his inability to work had been caused by personal injury by accident.

The Manitoba, Newfoundland and Saskatchewan Boards are authorized to pay a clothing allowance to cover the cost of special clothing or abnormal wear on clothing caused by the use of a prosthetic device. The allowance payable in Saskatchewan may not exceed \$96 a year in the case of a leg amputation and \$42 a year in the case of an arm amputation. In Newfoundland, the allowance may not exceed \$100 a year. The Alberta and Newfoundland Boards are also permitted to replace or repair any article of a workman's clothing destroyed or damaged as a result of an accident in respect of which the workman is entitled to compensation.

The Acts of most provinces specifically state that the Board may replace and repair dentures and eyeglasses broken as a result of an accident arising out of and in the course of employment. The British Columbia Board has authority to do so, however, only "if such breakage is accompanied by objective signs of personal injury", and the Saskatchewan Board may assume the expense of replacement and repair of broken dentures, eyeglasses, artificial eyes or artificial limbs only "when breakage is occasioned by an accident in which the workman is injured sufficiently to require medical attention for which the Board accepts responsibility".

The Saskatchewan Board may bear the expense of the removal of infected teeth or tonsils that can be assumed to hinder an injured workman's recovery.

Under all the Acts except those of British Columbia and Nova Scotia, the Board may authorize a surgical operation or other special medical treatment if, in its opinion, it will lessen the workman's permanent disability and hence conserve the Accident Fund (in Alberta, if, in the Board's opinion, such operation or treatment is in the injured workman's best interests to cure and relieve him from the effects of the injury).

In Alberta, British Columbia, Manitoba and Quebec, the Board is authorized to permit the workman to be treated by the physician of his own choice (in the British Columbia and Manitoba Acts, "the physician who may be selected or employed by the injured workman or his employer"). This privilege, however, is subject to the control of the Board. While the other Acts make no mention of choice of doctor, the practice is for the workman to be allowed to select his attending physician. Once a selection is made, however, he may not change doctors without the approval of the Board. (In British Columbia and Saskatchewan, the Board's written consent is required). Several Acts also stipulate that, while undergoing treatment, the workman must not without permission (in British Columbia, without the written consent of the Board) leave the province or transfer to another community for treatment.

A doctor is not entitled to collect from a workman for services rendered under the Act. Medical and hospital

accounts are sent directly to the Board for payment. Fees for medical aid are fixed by the Board after consultation with the professions involved. The Acts stipulate that the amount of fees may not be more than would be properly and reasonably charged to the workman if he were paying them himself.

MEDICAL EXAMINATION

A workman is required to submit to any medical examination ordered by the Board. If he refuses to undergo, or in any way obstructs, such an examination, his right to compensation is suspended (in Newfoundland, Nova Scotia and Saskatchewan, may be suspended, in the discretion of the Board), until the examination has taken place.

Under several of the Acts (New Brunswick, Nova Scotia, Ontario and Quebec), a workman must, if so required by the employer, submit to examination by a duly qualified doctor chosen and paid for by the employer.

In a number of the provinces (New Brunswick, Ontario, Quebec and Saskatchewan) the Board may, on the application of either the workman or the employer or of its own motion, as the case may be, refer a case in which there have been differences of findings between medical examiners to a medical referee (referred to in the Quebec Act as an expert).

In New Brunswick, the Board is required to supply the workman concerned with a list of certified specialists practising in the province in the field of medicine involved, from which he selects the specialist who is to conduct the examination. In making the selection, the workman must choose a specialist who, insofar as possible, is not an employer, director or officer in the industry in which he was injured, or who has not previously treated him or been consulted concerning his condition. The medical referee is appointed by order in council. His report to the Board certifying as to the condition of the workman and his fitness or unfitness for employment is conclusive (that is, binding on the Board, the workman and the employer).

Under the Ontario, Quebec and Saskatchewan Acts, the decision of the medical referee is to be taken as binding "unless the Board otherwise directs."

The Nova Scotia Act provides for an examination of the workman by a medical referee chosen by the Minister of Labour. The Board is required to consider the referee's report before deciding the workman's claim to compensation.

MEDICAL REVIEWS

Almost all of the Acts provide for a system of appeal to deal with cases where, on medical grounds, compensation has been refused, or has been paid at a lower rate or for a shorter period than claimed.

In New Brunswick, where a claim for compensation involving the physical condition of the workman has been contested, the claim may be referred to a committee of three medical practitioners, one chosen by or on behalf of the workman, one chosen by the employer, and the third (the chairman) chosen by agreement of the

other two members, or, failing such agreement within two weeks, appointed by the Board.

In Alberta, in cases of dispute regarding a medical question, if an examination is requested by the workman in writing, the Board must nominate not less than four recognized specialists in the class of injury or ailment for which compensation has been claimed, and the workman and his employer may each select one of them to examine the workman. If either or both fail to make a choice, the Board may make it. If the two specialists so chosen disagree, they are required to add a third member to their number from the panel, whereupon the decision of the majority is to be certified to the Board. The certificate of the medical practitioners is conclusive, unless the Board otherwise directs. The Board may also require a workman to be examined under this procedure without any request from the workman.

In British Columbia, Board decisions on medical questions may be appealed to a Medical Review Panel. A review of a workman's case may be requested by either the workman or his employer. A Medical Review Panel consists of a permanent chairman appointed by the Lieutenant-Governor in Council and two other members who are selected by the workman and employer, respectively, from a list of specialists in the appropriate field of medicine. Lists of specialists in various fields of medicine are drawn up by a nine-member medical committee appointed by the Lieutenant-Governor in Council. The Panel examines the workman and reviews the Board's records concerning the case. Its decision is conclusive and binding upon the Board and not open to court review.

In Nova Scotia, a board of three qualified doctors may be appointed by the Minister of Labour to review a case involving a medical controversy. Before appointing a medical review board, the Minister may refer the matter to a medical referee, if it had not been referred previously. The workman must submit himself for such medical examination as the medical review board requires, and the board has access to all reports relating to his claim. The Workmen's Compensation Board is required to act upon the decisions of the review board, which are effective from the date on which the board was appointed.

In Saskatchewan, a workman who requests a reconsideration of his claim on medical grounds may be examined by a specialist chosen by himself from a list of three specialists provided by the Board. After receiving the specialist's report, the Board is required to review the claim and notify the workman in writing of its decision.

In Manitoba, an injured workman who feels aggrieved at a medical decision concerning his case has a right to appeal to a Medical Board of Reference, consisting of a chairman and deputy chairman appointed by the Manitoba Medical Association, and three other doctors selected, respectively, by the injured workman, the employer, and the Workmen's Compensation Board, from a panel of specialists furnished by the Manitoba Medical Association. After reviewing the case and

examining the workman, the Medical Board of Reference is required to report its findings to the Board.

The Quebec Commission has initiated a procedure of hearings for disputed medical questions. This consists of bringing together, under the chairmanship of a member of the Commission, the doctors concerned and various specialists and experts, with a view to discussing the case and reaching agreement.

With the approval of the Lieutenant-Governor in Council, the Newfoundland Board may set up a committee of medical referees consisting of three specialists to investigate and determine, in relation to any claim for compensation, the nature of any disease named in the schedule and its relationship to any of the work processes associated with that disease in the schedule. A committee has the powers of a commissioner under the Public Enquiries Act and may require the workmen concerned to have a medical examination. The decision of the committee or any two of its members is binding on the Board and the claimant as to the medical findings in the case.

Costs of medical reviews are borne by the Accident Fund.

EMPLOYERS' SCHEMES FOR MEDICAL AID

Under all the Acts except those of Ontario and Saskatchewan, the Board may approve an employer's scheme for furnishing medical aid to his employees, in place of the medical aid provided for in the Act. An employer's medical aid plan may be approved, however, only if, after considering the wishes of both workmen and employer, the Board considers it to be at least as favourable to the workmen as the provisions of the Act. In British Columbia and Manitoba, the Acts state that employers' schemes may be approved, subject to such conditions as the Board may impose.

Employers' medical aid plans, approved by the Board and under its supervision, are in force in some provinces, replacing the arrangement for medical aid in the Act.

The Alberta, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts provide that, where medical aid is being furnished under an approved medical scheme, the employer is entitled to reimbursement out of the Accident Fund or to a reduction in his assessment rate.

The Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec Acts make it clear that workmen are not forbidden to contribute to private schemes of medical aid. They state that contributions from workmen towards the expense of medical aid are forbidden except as may be permitted under a private arrangement for furnishing medical aid approved by the Board.

MEDICAL AID FOR SEAMEN

Under Part V of the Canada Shipping Act, all ships arriving at any port in British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island or Quebec or at any port on Hudson Bay in Manitoba or

James Bay in Ontario are required to pay a duty for the Sick Mariners' Fund. Seamen employed on a vessel on which the duty has been paid are entitled to hospital, nursing and medical care for a maximum period of one year for any single injury or illness occurring while engaged as members of the crew. Ships engaged in the coastal trade and fishing vessels of Canadian registry are exempt but the masters of fishing vessels may elect to pay the duty, whereupon members of the crew qualify for sick mariners' benefits.

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of a provincial Workmen's Compensation Act, and the British Columbia, Newfoundland, New Brunswick and

Prince Edward Island Acts provide that a workman who is entitled to medical aid from the Sick Mariners' Fund under the Canada Shipping Act is not entitled to medical aid under the Workmen's Compensation Act during the period for which he is eligible for sick mariners' benefits.

The British Columbia Workmen's Compensation Board may supplement the medical aid provided from the Sick Mariners' Fund. The Act states that seamen are eligible under its provisions for any additional medical aid that is not furnished under the Canada Shipping Act, and gives the Board discretionary power to pay the medical costs of a seaman, when, for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act.

CHAPTER V

First Aid and Rehabilitation

FIRST AID

The Acts of all provinces give the Board authority to require employers in such industries as it deems proper to maintain first aid services.

Regulations in each province, applicable to all industries to which the Act applies, require employers to provide and maintain, at their own expense, first aid equipment and services. The Boards of the three prairie provinces have adopted uniform first aid regulations.

The Prince Edward Island regulations do not specify the appliances to be provided, and the New Brunswick regulations merely direct every employer to provide, and have in charge of a suitable person, a first aid kit approved by the Board.

In the other provinces the first aid services required to be maintained in the place of employment are specified in detail. They vary with the number of workmen employed, and, in British Columbia, with the hazard of the industry and with the distance between the place of employment and the office of a doctor or hospital, whether less or more than 5 miles. The Boards have authority to vary the standards specified in the regulations.

The purpose of laying down first aid service requirements was stated in the British Columbia Workmen's Compensation Board News Bulletin of June, 1961, as follows:

Immediate first aid care in many cases shortens the period of disability and lessens the severity of work injuries, which means that compensation costs to employers are kept to a minimum. In addition to the humanitarian benefits, skilled workers are returned to employment sooner with a minimum of disturbance to production. First Aid care also provides the main and sometimes the only medium for the prompt investigation of job accidents and a permanent record of every job injury which is so important in the whole Workmen's Compensation system.

The first aid requirements laid down are minimum requirements. Employers are required to provide first aid kits, the contents of which vary with the number of workmen employed, and, where the number of workmen warrants, to install a first aid room, equipped and attended in accordance with Board requirements.

The Alberta, Manitoba and Saskatchewan regulations contain a provision requiring a workman, on being injured, to avail himself immediately of the first aid supplies and services provided by his employer.

For purposes of the British Columbia regulations, the industries under the Act are classified as Class A, Class B and Class C hazards. For each class two standards of first aid equipment and services are specified, each varying with the number of employees on any one shift, one when the place of employment is less than 5 miles from the office of a doctor or hospital, and another when the place of employment is more than 5 miles from the office of a doctor or hospital.

"Place of employment" for purposes of first aid requirements includes, in Alberta, Manitoba and Saskatchewan, trucks and automobiles being used for purposes of an employer's business. In Ontario, it includes trains, vessels, buses operated on a route other than an urban route, the central point from which bush workers are despatched daily to work sites, and the site of the construction or repair of a building.

In Newfoundland, a pocket first aid kit must be carried by all mine foremen employed underground, all foremen in logging or sawmill operations, all truck drivers who transport workmen, and all other persons in charge of workmen at places where first aid treatment is not readily available.

The British Columbia regulations set out first aid requirements for operators of mobile equipment, for stevedoring, ship-lining, shipping and ship repairing, and for municipal fire departments. With regard to fire departments, they state that one first aid attendant must be employed for every 20 firemen, and that every unit of 20 or more men despatched to fight a fire must include a first aid attendant.

Several of the provincial regulations contain a requirement that employers must have available a means of transporting injured workmen to the nearest hospital or doctor.

The Alberta, Manitoba and Saskatchewan regulations state that such transportation must be provided and that, whenever possible, at least one person other than the driver must accompany any seriously injured workman while being transported.

In British Columbia, suitable speedy transportation with competent attendant must be kept immediately available. Where deemed necessary by the Board, the employer must provide a vehicle to be used exclusively as an ambulance. In all cases where an injured workman is transported by ambulance he must be accompanied by a first aid attendant.

In British Columbia, the training of first aid attendants has from the beginning been an important part of the first aid service. The Board does not train first aid attendants. Training is carried on under the joint auspices of the First Aid Attendants' Association of British Columbia, which the Board assisted in organizing in 1931, and the St. John Ambulance Association. The curriculum is set by an advisory board with representation from both these organizations. Candidates for certificates are examined by a Board of Examiners appointed by the Workmen's Compensation Board.

A first aid attendant for purposes of the British Columbia regulations is the holder, in good standing, of an industrial first aid certificate. There are four grades of certificates, indicating different levels of proficiency. To keep up high standards, the Board sponsors a provincial competition in first aid proficiency each year. At the

end of 1966 there were 4,002 certified attendants available to industry in the province.¹

Employment of a first aid attendant is mandatory in Class A (the most hazardous) industries employing over 35 workmen when the place of employment is less than 5 miles from a doctor or hospital, and in those employing over 15 workmen when the place of employment is more than 5 miles from a doctor or hospital. In Class B industries employers who employ more than 35 workmen must have a first aid attendant. In Class C industries a first aid attendant must be provided wherever more than 75 workmen are employed.

In addition to the above general requirements, the regulations provide that, where the work location is more than two hours' travelling time from doctor or hospital, or where there is no immediate means of communication, or where weather or road conditions make transportation impossible, the first aid attendant must have at least a Grade B certificate, unless otherwise approved by the Board.

The Alberta, Manitoba and Saskatchewan Boards have laid down the requirement that at any place of employment more than 5 miles from a doctor or hospital where more than 5 workmen are employed there must be at least one workman on every shift with first aid qualifications satisfactory to the Board.

The Alberta, Newfoundland and Saskatchewan Boards conduct classes in first aid training. In Alberta, St. John Ambulance instructors and examiners are used in these classes, and a first aid attendant for purposes of the regulations is a workman who is the holder, in good standing, of a St. John Ambulance first aid medallion or better, or its equivalent satisfactory to the Board. The employer must ensure that a registered nurse or first aid attendant is in charge of the first aid room. The same requirements are laid down in Manitoba and Saskatchewan. Similarly, in Ontario, the person in charge of a first aid room must be a registered nurse or an employee who holds a St. John Ambulance senior first aid certificate in good standing or its equivalent.

The regulations of the other provinces do not specify the precise qualifications required. If not a nurse, the person in charge of a first aid room in Newfoundland and Nova Scotia must have taken a recognized course of study in first aid, and in Quebec must be "duly qualified through training or experience in the treatment of work injuries".

The first aid attendant (in Alberta and Ontario, the employer) is required to keep a detailed record of injuries to workmen and the first aid treatment given.

In Newfoundland, plant safety committees must check first aid supplies and see that a proper record is kept of all injuries.

In British Columbia, every employer is required to forward to the Board each year, on a form supplied for the purpose, a First Aid Service Report outlining the equipment and services available at his place of employment.

In British Columbia, where an employer fails to comply with the Board's first aid regulations, the Board has authority to install the required appliances and charge the cost to the employer.

The Alberta, British Columbia and Ontario Boards also have authority to increase the assessment of an employer who has failed to comply with the first aid regulations, and in practice enforce compliance with the regulations by raising the employer's assessment rate.

REHABILITATION

The Canadian workmen's compensation system is rehabilitation-oriented. The objective of the program is that injured workmen should be, to the greatest extent possible, restored to health and physical function and returned to gainful employment. The aim in each individual case is the maximum reduction of permanent disability in the shortest possible time. To this end the Acts provide for unlimited medical care and for physical and vocational rehabilitation.

The Acts of all provinces give the Board very wide powers in the field of rehabilitation. The Board's authority is usually stated in these terms: "To aid in getting injured workmen back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it deems necessary or expedient".

Five Boards — those of Alberta, British Columbia, New Brunswick, Ontario and Quebec — operate Rehabilitation Centres. These are located, respectively, in Edmonton, Vancouver, Lancaster, Downsview (near Toronto), Montreal and Quebec City. Other Boards make use of local hospitals and clinics, where the workman is under the control of his own doctor, and also any existing private or public rehabilitation agencies.

The Ontario Hospital and Rehabilitation Centre consists of a hospital and clinic. In the other Centres no active hospital treatment is given.

In cases of less serious injury, rehabilitation is provided through local hospitals and facilities. Seriously injured workmen, particularly those with permanent disabilities, such as amputees, may be referred to a Rehabilitation Centre or other rehabilitation agency for treatment. Special emphasis is placed on early rehabilitation measures.

At the Centres physical rehabilitation is carried out by specialists in the field of rehabilitative medicine — doctors, nurses, physiotherapists, occupational therapists and remedial gymnasts—acting as a team and using the most advanced treatment techniques and equipment. In addition to expert medical care and physiotherapy, facilities are available in some Centres to simulate work situations, thus enabling the workman to engage in various activities related to the job to which he will return.

Vocational rehabilitation consists of vocational guidance, testing, counselling, assistance in finding suitable gainful employment and retraining, where advisable.

Although the Board is not obliged to find work for a workman whose disability prevents him from returning to his former occupation, it makes every effort to assist him in re-establishing himself in employment.

¹1966 Annual Report of the Workmen's Compensation Board.

There is no legal obligation for an employer to rehire an injured workman. Many employers, however, feel a moral responsibility to rehire workers who have been disabled in their employment.

If, on completion of treatment, a workman cannot return to his former employment and no other suitable job is available, retraining is considered. Training expenses are paid by the Board. Training on the job or in a vocational school, technical institute or business college, or further academic education may be arranged.

In most provinces the Act at one time placed a limit on the amount which could be spent in a year for rehabilitation services but in nearly all cases these limits have been removed. The Prince Edward Island Act restricts rehabilitation expenditures to \$10,000 a year. In Newfoundland, the limit fixed by the Act is \$15,000 but the Board is empowered to spend, in addition, up to

\$25,000 in a year for academic or vocational training for injured workmen. The Ontario Board's expenditures were formerly limited to \$200,000 a year but it may now spend such additional amounts over and above \$200,000 as may be authorized by the Lieutenant-Governor in Council.

Supervised medical care and rehabilitation services provided by the Boards have brought about a significant reduction in the percentage of compensable claims which result in permanent disability.

The British Columbia Workmen's Compensation Board News Bulletin of August, 1967, reported that of the 822,390 work injury cases reported to the Board during the previous ten years, 11,972 had resulted in permanent disability. About three in four of these permanent disability cases involved loss of physical function of less than 10 per cent.

CHAPTER VI

Industrial Diseases

The Acts of all provinces give workmen the right to compensation for industrial diseases, subject to certain conditions, as if the disease were the happening of an accident. The Acts vary in the conditions laid down and in the interpretation that is placed upon the term "industrial disease".

Each of the Acts except the Act of Manitoba contains a schedule of industrial diseases for which compensation is payable. Opposite each disease in the schedule is listed the industrial process or industry in which the disease must arise in order to be compensable.

Under a system of schedule coverage, if a workman is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved.

A specific disease and corresponding occupation are placed in a schedule when it has been established that the disease is a risk peculiar to that occupation and that its incidence in that occupation is substantially greater than its incidence in the general population. A workman benefits from the scheduling of an industrial disease, since, if he contracts that disease after having been engaged in the associated work process, he automatically becomes entitled to compensation unless proof is brought forward that the disease was not of occupational origin.

The Boards are empowered to add diseases to the schedule, as necessary, subject to the approval of the Lieutenant-Governor in Council, and in most provinces diseases have been added by the Board to the original list.¹

British Columbia has scheduled more diseases than any other province. A schedule to the Act enumerates 13 diseases; those added to the schedule by the Board appear in regulations and number about 55. (The same disease, for example, dermatitis, may appear in the schedule a number of times with differing work processes).

The number of industrial diseases contained in the schedule of each of the other provinces is as follows: Alberta 10; Nova Scotia 15; Prince Edward Island 17; New Brunswick 20; Quebec 22; Newfoundland and Ontario 29; Saskatchewan 42. Manitoba repealed its schedule of industrial diseases in 1959.

In all provinces, however, a disease contracted by a workman may be compensable, even though it is not included in the schedule, if it can be shown to have been caused by the nature of his employment. In such case the claimant does not have the benefit of the statutory presumption applicable to scheduled diseases. Where a workman claims compensation for a disease that is not listed in a schedule, the burden of proving that it was due to the nature of his employment rests with him.

This is explicitly stated in the Act of Quebec. The provision setting out the statutory presumption with regard to the disease in the schedule adds the words: "In the other cases it must be established to the satisfaction of the Commission that the disease was caused by the nature of the process in which the workman was employed".

In some provinces the definition of "accident" enables the Board to pay compensation for any disease, if it is satisfied that the disease is occupational in character.

In the Alberta, British Columbia, New Brunswick, Ontario and Prince Edward Island Acts, "accident" is defined to include "disablement arising out of and in the course of the employment". The expression "disablement arising out of and in the course of the employment" is designed to cover any disablement suffered by a workman that is work-caused, including disablement resulting from an industrial disease. This is made clear in several of the Acts, which provide that, where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement.

"Accident" in the Manitoba Act means a chance event occasioned by a physical or natural cause but includes, *inter alia*, "conditions in a place where an industrial process, trade or occupation is carried on that occasion a disease, and as a result of which a workman is disabled".

In this Act, which has no schedule of diseases, "industrial disease" is defined as any disease that is peculiar to or characteristic of an industrial process, trade or occupation to which Part I applies, and it is left to the Board to decide in each individual case whether a disease for which compensation is claimed is peculiar to or characteristic of a particular industrial process, trade or occupation. The Act stipulates that, where disablement is caused by an industrial disease, the date of the beginning of the disablement is to be deemed the date of the accident.

In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario and Quebec, as in Manitoba, the Board is permitted to pay compensation for any disease that it finds to be peculiar to or characteristic of a particular industrial process, trade or occupation in which the workman was employed. The Quebec Act adds at the end of its schedule of diseases: "Any disease peculiar to or characteristic of a particular

¹The McGillivray Report (p. 113) stated that in Ontario there had been no addition to the schedule for some years and the Board now treats it simply as a working guide. The Board maintains a continuous review of new industrial processes. Instead of adding specific diseases and processes to the schedule as they appear, it relies on the second part of the definition of "industrial disease" (...and any other disease peculiar to or characteristic of a particular industrial process, trade or occupation) in adjudicating industrial disease claims.

industrial process, trade or occupation is declared to be an industrial disease under the Workmen's Compensation Act."

In Prince Edward Island, any disease peculiar to or characteristic of a particular industrial process, trade or occupation is declared to be an industrial disease insofar as it applies to employees of clinics, hospitals, laboratories or sanatoria.

In Quebec, since 1961, when hospitals were brought under the coverage of the Act, compensation has been payable for any contagious disease contracted in employment in a hospital that can be shown to have been due to the nature of the employment.

The Newfoundland Act was amended in 1960 to enable the Board, with the approval of the Lieutenant-Governor in Council, to appoint a committee of medical referees, consisting of three specialists in the field of medicine involved, to investigate, in relation to any claim for compensation, the nature of a disease named in the schedule and its relationship to any of the work processes listed opposite the disease in the schedule. The decision of such a committee is final and binding on the Board and the claimant as to the medical findings in the case. A committee of medical referees was appointed in 1964 to deal with cases of lung cancer affecting employees of fluorspar mines.

ENTITLEMENT TO COMPENSATION

To be entitled to compensation for an industrial disease, a workman must be disabled by reason of the disease from earning full wages at the work at which he was employed.

In six provinces — Alberta, British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Quebec — to be entitled to compensation for an industrial disease, the workman is required to have been employed in the employment to which the disease is attributed in the course of the 12 months previous to his disablement. The above provision in the Alberta and Prince Edward Island Acts applies only with respect to scheduled diseases; in British Columbia, New Brunswick, Nova Scotia and Quebec, it applies with respect to scheduled diseases and also to any disease recognized by the Board as an industrial disease.

Exceptions from the 12-month time limit are allowed for radiation disabilities in Nova Scotia and for disablement caused by employment in compressed air in British Columbia (see p. 36).

The Newfoundland, Ontario and Saskatchewan Acts state that compensation is payable if the disease is due to the nature of any employment under the Act in which the workman was engaged, whether under one or more employments. In these provinces there is no requirement that the workman must have been engaged in the employment within the 12 months preceding his disablement.

In Ontario and Quebec, it is a condition of entitlement to compensation that the workman must have

been a resident of the province for the three years preceding his first disablement from an industrial disease, unless the Board is satisfied that the disease is not due to any other cause than his employment within the province.

The New Brunswick and Prince Edward Island Acts make it clear that an industrial disease is compensable only where it is due to employment within the province.

As indicated above, no special conditions are laid down in the Manitoba Act for the payment of compensation for an industrial disease. Where the Board decides that a disease contracted by a workman is peculiar to or characteristic of his occupation, the disablement is compensable under the same terms as the happening of an accident.

All the Acts except those of Alberta and Manitoba forbid the payment of compensation in any case where the workman at the time of entering into the employment "wilfully and falsely" represented himself as not having previously suffered from the disease. In British Columbia, Ontario, Quebec and Saskatchewan, however, a workman is only ineligible for compensation if he made such a statement in writing.

In Newfoundland, New Brunswick and Prince Edward Island, the Board may require a workman in any employment subject to the Act to have a medical examination in order to determine whether he has an industrial disease. If he refuses or fails to do so, his employer may not continue to employ him.

Claims for industrial diseases account for a very small percentage of the total number of claims received by the Boards.

In British Columbia, the number of industrial disease claims received in 1966 was 1,184 out of a total of 95,322 claims, or slightly over 1 per cent.

In Ontario, out of a total of 331,405 claims initially settled in 1965, 1,954 claims were for compensation for industrial diseases, or approximately one-half of 1 per cent.

Industrial disease claims in other provinces were less than 1 per cent of the total claims received.

Dermatitis accounted for the greatest number of claims in both British Columbia and Ontario, with tenosynovitis in second place in both provinces. The third largest number of claims was for respiratory irritation in British Columbia and for various poisonings in Ontario. Eighteen claims were made for silicosis in British Columbia and 22 in Ontario.

The industrial diseases contained in the schedules to the various provincial Acts are shown in a table beginning at page 95.

Occupational (Noise-Induced) Deafness

Loss of hearing arising from continued exposure to excessive noise in the course of employment is compensable in almost all provinces.

In British Columbia, traumatic deafness arising from employment in any industry where there is exposure to blasting or other noise capable of producing injury to

the auditory nerve or middle ear has been a scheduled industrial disease since 1952. Occupational deafness in any industry involving prolonged and continued exposure to excessive noise is also a scheduled disease in British Columbia. In other provinces occupational deafness may be compensated under a definition of "accident" that includes any disablement arising out of and in the course of the employment, or under the blanket provision for coverage of any industrial disease "peculiar to or characteristic of a particular industrial process, trade or occupation".

The Boards do not recognize mild to moderate degrees of deafness, as it is seldom that the condition causes impairment of earning capacity. Compensation is granted only if there is an impairment of earning capacity. An award is not usually made until a workman leaves noise exposure, which is, in most cases, at time of retirement. Where the workman is able to establish entitlement, even though he elects to continue working in exposure employment, a hearing aid is supplied. If he chooses to seek other employment to conserve his hearing, he is eligible for rehabilitation assistance.

The British Columbia Accident Prevention Regulations² (see p. 71) state that, when workmen are required to work in areas in which noise levels exceed the criteria adopted by the Board, the employer must take appropriate measures to suppress the noise to approved levels and, if it is not reasonably practicable to decrease the noise or isolate the workman from the noise, workmen must wear personal protective equipment, such as ear plugs or muffs. Workmen exposed to excessive noise are required to wear ear protectors.

Heart and Lung Injury Due To Fire-fighting

Regulations in Manitoba make full-time fire-fighters eligible for compensation, under specified conditions, if they suffer a heart attack or a lung injury in the course of their duties.

Unless the contrary is proved, a heart attack suffered by a full-time municipal fire-fighter while actually engaged in the fighting of a fire or in prescribed training involving substantial physical, mental or nervous strain is to be deemed to have been suffered in the line of duty and to have arisen out of, and in the course of, his employment, if: (a) the fire-fighter had been in continuous service as a member of the department during the preceding two years; and (b) at the time of entering the service he had undergone a physical examination,

including an examination of the circulatory system, and had been approved for service as a fire-fighter.

A fire-fighter is not disqualified for benefit under these regulations by reason of having suffered a previous heart attack, whether compensable or not, if he was thereafter medically certified to be fit for service.

A fire-fighter who becomes disabled by reason of lung injury is, unless the contrary is proved, deemed to have incurred the disability in the course of his employment, if the type of lung injury is generally accepted in medical opinion as resulting from the inhalation of smoke, gases or fumes, or any two or more of these causes.

Disability due to inhalation of carbon monoxide is deemed to have been incurred in the course of employment only if a medical ruling of disability due to carbon monoxide poisoning is made within 48 hours of exposure.

In British Columbia, injury to the lungs and injury to the heart suffered by a person engaged in fire-fighting are diseases enumerated in the schedule, giving rise to compensation without the necessity of proving the occupational origin of the disease.

In the other provinces, if a fireman is incapacitated while fighting a fire, he is compensated as if suffering from an accident.

Radiation Disabilities

In British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan, any disease caused by radiation, and in Newfoundland, carcinoma or malignant disease arising from radiation, are scheduled industrial diseases. The effect of this is that any such disease contracted by a workman who has been employed in a process involving exposure to X-rays, radium or other radioactive substances is presumed to be of occupational origin and is compensable.

The Nova Scotia Act contains special provisions relating to radiation injury or disease. These provisions were enacted in recognition of the fact that radiation disabilities are in a special class, in that exposure to the effects of radiation may not cause disablement for a considerable time. A workman is not required, therefore, as a condition of entitlement to compensation, to have been engaged in the employment to which the disease is attributed within the 12 months preceding his disablement, as is the case with other industrial diseases, and the Board may pay benefits where the workman was exposed to radiation in his employment at a time earlier than 12 months previous to the date of his disablement or death.

²Three other provinces have enacted similar legislation. Regulations under the Ontario Industrial Safety Act require employers to take such steps as are practicable in the opinion of an inspector to prevent injury to hearing by reducing or eliminating noise.

The New Brunswick Industrial Safety Code provides that noise levels in places of employment must be kept in a range which is comfortable and harmless to employees. Where this is not possible, ear protective devices must be used.

Regulations under the Alberta Public Health Act set out maximum sound pressure levels to which persons may be exposed each day for given periods of time. Where exposure to noise is greater than the prescribed safe limits, employees are required to have hearing tests, and the employer must take appropriate measures to suppress the noise to the specified levels. If this is not practicable, he must supply ear protectors, free of charge, and the worker must wear the equipment provided.

In Newfoundland, Ontario and Saskatchewan, as indicated on page 34, there is no requirement with regard to *any* industrial disease that the workman must have been engaged in the employment to which a disease is attributed within the 12 months preceding his disablement.

Other provisions in the Nova Scotia Act lay down the conditions under which benefits are provided for radiation disease.

The Act states that, where the Board finds that disability or death was caused by the proximate effects or radiation overdosage, the workman or his dependants are entitled to benefits as if the overdosage were a personal injury by accident.

If, in the opinion of the Board, disability or death was caused by the cumulative effects of radiation over an extended period, the effects of the radiation are to be deemed to be an industrial disease, and the workman or his dependants are entitled to benefits.

Where a workman has been exposed to radiation outside Nova Scotia as well as within the province, the compensation paid to him is to be in the proportion that the exposure to radiation in Nova Scotia bears to the total exposure.

The Act also requires the maintenance of records by employers. Employers who use any form of radiation likely to be hazardous to employees are required to furnish reports of such exposure to the Board.

In the remaining four provinces, the very broad definition of "accident" would appear to permit the Board to compensate for disabilities arising out of exposure to radiation.

Compressed Air Illness

Compressed air illness or caisson disease (popularly known as the bends) is a scheduled disease in British Columbia, Newfoundland, New Brunswick, Ontario, Quebec and Saskatchewan when it occurs in employment in any process carried on in compressed air.

The British Columbia Act was amended in 1967 to authorize payment of compensation to workmen for compressed air illness arising from employment in the province, notwithstanding the fact that they were not disabled within 12 months after being employed in compressed air.

The amendment, providing an exception to the general rule that, for entitlement to compensation for an industrial disease, a worker must have been employed in the employment concerned within the 12 months previous to the date of the disablement, applied retroactively to disablements occurring on or after January 1, 1965. The press reported that it was enacted to provide compensation for workmen who had been injured in a tunnel project and who had been unable to qualify under the terms of the Act.

Although not a scheduled industrial disease in the other provinces, compressed air illness would appear to be compensable under the Board's general powers to pay compensation for any work-caused disability.

SILICOSIS AND OTHER DUST DISEASES

Because of the extent of the mining industry in Canada, silicosis and other dust diseases of the lungs associated with hard rock mining have been included as compensable industrial diseases under the Acts for many years, and special provisions have been enacted relating to these diseases.

Pneumoconiosis (the general term covering all dust diseases of the lungs), silicosis and other specific lung diseases are enumerated in the schedules of industrial diseases in eight provinces. In order to be compensable, the disease must be contracted in the process listed opposite it in the schedule. In most provinces the processes listed include, along with mining, industries and occupations other than mining in which there is exposure to silicosis— or pneumoconiosis-producing dusts (for example, quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal and pottery making). For the processes or industries specified in each Act, see the table beginning on page 95.

The provincial Acts vary as regards the enumeration of dust diseases in the schedule.

Ontario lists "silicosis" and "the pneumoconioses other than silicosis", and stipulates that the provisions of the Act relating to silicosis apply also to pneumoconiosis and stone workers' or grinders' phthisis. Stone workers' or grinders' phthisis is also listed in the Newfoundland and Saskatchewan schedules (miners', stone workers' or grinders' phthisis in Saskatchewan).

In Alberta, the collective term pneumoconiosis is used to cover all lung diseases due to dust. As defined in the schedule in the Act, it includes, *inter alia*, "silicosis, silico-tuberculosis, anthraco-silicosis, asbestosis, and all chronic changes in the lung induced by the prolonged inhalation of dust of a non-living character". The term pneumoconiosis is also used in the Saskatchewan and Quebec schedules. In Saskatchewan it is deemed to include silicosis, and in Quebec it is deemed to include silicosis and asbestosis.

British Columbia, Newfoundland and New Brunswick list both silicosis and pneumoconiosis. Asbestosis is specified separately in British Columbia.

Silicosis occurring in any process involving the inhalation of silica dust is compensable under the Prince Edward Island Act.

Silicosis is not a scheduled disease in Manitoba and Nova Scotia, but it is compensable in these provinces, provided the workman is disabled as a result of the disease and meets the requirements of the Act with respect to residence and duration of exposure to silica dust in employment in the province. In Manitoba, silicosis occurring in any industry within the scope of Part I is compensable when these conditions are met. In Nova Scotia, compensation is payable for silicosis occurring in any industry to which the Act applies and for coal miners' pneumoconiosis contracted in coal mining. The latter disease, defined to mean "a fibrotic condition occasioning loss of lung function caused by inhaled coal dust combined with tuberculosis of the lung", was added

to the schedule in 1959. Compensation for the disease is payable on the same terms as for silicosis. In line with a recommendation of the McKinnon Commission, costs of claims for coal miners' pneumoconiosis that were made before January 1, 1959, are paid from the Consolidated Revenue Fund of the province.

From May 1, 1960, all pensions awarded to workmen disabled by silicosis or coal miners' pneumoconiosis before April 1, 1959, were increased to the rate payable from April 1, 1959 (75 per cent of average earnings, subject to a ceiling of \$3,600).

The New Brunswick Legislature passed a special Act in 1955, making provision for assistance to workmen who had contracted silicosis in employment in the province before June 1, 1948, when it was made a compensable industrial disease under the Workmen's Compensation Act. Under this special Act, which is administered by the Workmen's Compensation Board, a workman who is disabled as a result of contracting silicosis in employment in New Brunswick before 1948, or the widow of such a workman, is paid a monthly allowance from moneys provided from the Consolidated Revenue Fund. The original monthly payment of \$40 has been increased to \$75.

Silicosis is variously defined in the provincial Acts. Some (New Brunswick and Nova Scotia) merely define the disease as a characteristic fibrotic condition of the lungs caused by the inhalation of silica dust. Others, in addition to defining silicosis as above, lay down certain requirements that must be met in order to establish a diagnosis of the disease. Because of the difficulty of making a diagnosis, a number of the Acts have been amended to make the conditions for the establishment of a claim less stringent.

Under the Alberta Act, the fibrotic condition must be established by X-ray and must be accompanied by a substantially lessened capacity for work. Alberta is now the only province that stipulates that there must be X-ray evidence of the disease, this requirement having been removed in British Columbia³ and Manitoba. In Manitoba, a claim may be established either by X-ray or as a result of other scientific test or examinations, and the condition must be accompanied by a substantially lessened capacity for work.

In British Columbia and Ontario, the workman is required to show a "lessened" capacity for work. In British Columbia, the word "substantially" was struck out in 1959.

The Saskatchewan Act (Section 54(7)) sets out the conditions for determining, for the purposes of the Act, whether a person has or has had silicosis in the ante-primary stage, in the primary stage and in the secondary stage. These include some impairment of the workman's capacity for work in the primary stage and a serious and permanent impairment in the secondary stage.

³The Tysoe Report stated (p. 253) that cases such as that of Zucco (*Zucco v. Workmen's Compensation Board* 20 W.W.R., Part 6, 257) persuaded the Board that there should be a relaxing in the definition of "silicosis".

Conditions upon which compensation may be granted for silicosis (or in some provinces for both silicosis and pneumoconiosis) are set out in the Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Acts. These conditions relate to length of residence and a minimum period of exposure to dust conditions in the province preceding disablement. In most provinces these periods have been reduced from those that originally applied.

The British Columbia Act states that the workman must have been free from silicosis and tuberculosis (or pneumoconiosis and tuberculosis) before being first exposed to silica dust in the province, and either three years' residence is required or at least two-thirds of the workman's exposure to silica dust must have been in the province.

As explained by the Sloan Royal Commission Report of 1942 (p. DD144), the purpose of the restrictive conditions is to protect the mining industry of the province from claims of silicotic miners who have been exposed to silica dust in other jurisdictions. The means used to exclude miners who have had exposure elsewhere is the pre-employment medical examination and the issue of certificates of fitness.

In his 1952 Report (p. R77) Chief Justice Sloan stated:

When a workman is granted a certificate of fitness, he is assumed free from previously contracted silicosis in another jurisdiction, and if the disease becomes manifest in this Province in a period of less than three years, he is then a responsibility of the mining industry in this Province.

If, on the other hand, he is, on examination for a certificate of fitness, found to be suffering from the effects of exposure to silica-dust in another Province or country, he is refused a certificate. I see no reason why, in this instance, he should be, from then on, regarded as a charge on the mining industry of this Province.

In other provinces, limitations regarding residence and period of exposure are considered necessary for the same reason.

The difficulties of dealing with some silicosis claims and of fairly apportioning compensation costs where there has been exposure elsewhere than in the jurisdiction concerned were referred to in the Report of the Tysoe Commission of Inquiry (p.255), as follows:

The precise time of origin of a silicotic condition is not easy to establish. The condition may have commenced many years before a claim for compensation in respect of it is valid. Some miners, by the very nature of the work, move from Province to Province. Such men and immigrants from other lands may have been exposed to silica dust elsewhere than in British Columbia but are not found to be silicotic until they are working in this Province.

Mr. Justice Tysoe pointed out that the Association of Workmen's Compensation Boards of Canada had attempted to promote a concerted approach to the problem by all provinces. He noted that a Silicosis Committee of the Association had made the following recommendations in 1961:

- (1) A minimum exposure period of two years;

- (2) That there be no time limitation for filing of claim;
- (3) That all present limiting clauses as to residence should be abolished;
- (4) That accurate work records of all miners be kept and all such records be filed with the appropriate Department of Mines should a particular mine cease to operate;
- (5) That adequate pre-employment chest examination, including X-ray, should be established;
- (6) That each employee should have an adequate annual re-examination;
- (7) That there should be periodic dust counts and adequate control measures;
- (8) That authority under the respective Acts be given to each Board to make agreements with each other with respect to claims where there has been exposure in more than one Province.⁴

The Tysoe Report stated that the recommendations called for uniform legislation to be enacted by all provinces but that such legislation had not been enacted by the provinces.

The conditions regarding residence and minimum period of exposure that must be fulfilled in the various provinces in order for the workman to receive compensation, as well as the time limits within which a claim must be filed, are set out in the table on page

These qualifying conditions may not in all cases bar a claim for compensation. Under the Alberta, British Columbia, Ontario and Quebec Acts, the Board is permitted to accept claims where there has been a lesser period of exposure (Alberta and British Columbia) or a shorter period of residence (Ontario and Quebec) than that set out in the table, if it is satisfied that the disease is entirely due to employment within the province.

Under the provisions of the Nova Scotia Act, which were adopted on the recommendation of the McKinnon Commission, a workman who has been a resident of the province for the three years immediately preceding his disablement is entitled to benefits if at least 50 per cent of his exposure to silica dust or coal dust was in employment in the province. Where he is entitled to compensation in another jurisdiction, his Nova Scotia award must be reduced by that amount.

Subject to the three-year residence requirement, where more than 50 per cent of the exposure was outside the province, benefits are proportionate to the period of exposure in the province in relation to the total period of exposure. That is, compensation is awarded for that portion of the disability considered to be the responsibility of Nova Scotia industry.

The Manitoba Act provides for a reduction in pension for exposure to silica dust outside the province. If it can be shown that the workman was exposed to silica dust elsewhere than in Manitoba before working the prescribed minimum five-year period in the province, compensation must be reduced by the proportion that his period of exposure elsewhere than in Manitoba bears to the total period of exposure.

Under the Alberta and British Columbia Acts, the Board has authority to make agreements with other Boards with respect to claims for compensation for silicosis where there has been exposure in more than one jurisdiction. The Alberta Act enables the Board to make an agreement with the appropriate compensation authority in any other Canadian jurisdiction, providing for the sharing of the costs of a claim in proportion to the exposure by the claimant in each province or territory. The British Columbia provision is expressed in more general terms, empowering the Board to enter into an agreement, subject to the approval of the Lieutenant-Governor in Council, with any other compensation authority in Canada "providing for co-operation in all matters under this Act relating to a workman disabled by silicosis".

The Manitoba and Saskatchewan Boards are empowered to make agreements with other Boards with respect to claims for compensation for *any* industrial disease, to the end that the workman or his dependants may receive compensation under one Act or the other.

The Manitoba Act provides for agreements, for which the approval of the Lieutenant-Governor in Council is required, with the Ontario and Saskatchewan Boards relating to compensation claims of workmen employed in an industry the operations of which extend across an interprovincial boundary line. The Saskatchewan Board may make an agreement with any other provincial Board with respect to compensation claims for an industrial disease contracted by workmen whose work is performed partly in Saskatchewan and partly in another province. The Manitoba and Saskatchewan Boards have entered into an agreement regarding silicosis claims rising from employment in the mining operation at Flin Flon, which extends across the interprovincial boundary.

In the provinces in which a time limit is set for the filing of claims, the Board may exercise its discretion in favour of the workman. In British Columbia and Quebec, the Acts state that the time limit is not to prevent the Board from allowing any claim that it considers should in justice be allowed.

The Nova Scotia Board is permitted to accept a claim for uncomplicated silicosis, regardless of when a claim is filed, if at the time of making the claim the claimant is a Nova Scotia resident and has not been exposed to silica dust elsewhere. It may, in its discretion, reopen or receive a claim for silicosis or coal miners' pneumoconiosis at any time, notwithstanding the five-year time limit set in the Act.

The Manitoba Board may now reconsider claims previously rejected because they were not made within a year after the workman left his employment in the industry in which he was exposed to silica dust, or because he had ceased to reside in Manitoba before becoming disabled. A workman who had left the province before becoming disabled may make a claim and, if the Board considers that exposure in Manitoba was a major factor in bringing about his disablement, it may award him compensation.

⁴ The McGillivray Royal Commission recommended (p. 141) that legislation be enacted in Ontario to authorize the Board to make such agreements.

CONDITIONS UNDER WHICH COMPENSATION IS PAYABLE

Province	Residence	Period of Exposure to Silica Dust in Employment in Province	Time Limit for Filing Claim
Alberta	—	at least 450 work shifts (2 years)	—
British Columbia	at least 3 years or at least 2/3 of exposure must have been in province	3 years	while employed, or within 5 years after leaving employment, and in either case within one year after date of disablement
Manitoba	at least 5 years	at least 5 years	within one year from date of leaving employment; if employed, within 2 years of date at which latest examination showed work- man to be free of disease
Nova Scotia	at least 3 years	at least 50 per cent of exposure must have been in an industry under the Nova Scotia Act	within 5 years after termination of employment and within one year after it has been determined that death or disability was due to the disease
Ontario	3 years	at least 2 years	—
Quebec	3 years	at least 2 years	5 years from date of leaving employment
Saskatchewan	—	at least 3 years	—

Preventive Measures

Good mining practices and the enforcement of dust control measures in mining laws, for example, the use of water and water sprays to suppress dust and the provision of mechanical means of ventilation, have brought about a considerable lessening of the silicosis hazard.

The work of mines accident prevention associations and workmen's compensation boards, and particularly that of the British Columbia Workmen's Compensation Board, has also helped to bring about a decline in the number of silicosis claims.

In 1937, the year after silicosis was made a compensable disease, the British Columbia Board set up a silicosis prevention division in its Accident Prevention Department to control dust and improve ventilation measures in the mines of the province.

Since that time the Board's inspection staff has continued to make inspections and surveys in industries and plants in which there is dust exposure to determine the dust concentrations to which workmen are subjected and the effectiveness of control measures.

In 1959, mines, quarries and metallurgical works were excluded from the establishments subject to inspection by the Workmen's Compensation Board, and from September 1, 1962, responsibility for dust and ventilation surveys in mines, quarries and concentrators was transferred to the Department of Mines and Petroleum Resources. To carry out this work, the latter Department obtained the services of two Silicosis Control Inspectors who were formerly with the Workmen's Compensation Board.

Inspectors appointed under the Mines Regulation Act and known as Environmental Control Inspectors now have the duty of inspecting dust and ventilation conditions in mines.

Since 1962 the Board's dust control and ventilation activities have been carried out in the field of silicosis and pneumoconiosis exposure outside the mining industry. Regular surveys are made at underground construction projects, rock-drilling operations on the surface, rock-crushing plants, foundries, stone-cutting and dressing operations, plants handling asbestos fibre, and fertilizer, asphalt, monument and other plants where there is exposure to rock dust.

Minimum requirements of mechanical ventilation, dust control and respiratory equipment have been laid down by the Board, as a part of its Accident Prevention Regulations, for asphalt-mixing plants and rock-crushing plants and for underground rock-drilling and surface drilling operations.

In its safety regulations governing ventilation and the control of atmospheric contaminants, adopted in 1965, the Alberta Board laid down special requirements applying to abrasive blasting, gravel crushing, quarrying and sand pit operations.

Workmen engaged in gravel crushing, quarrying or sand pit operations must be protected from dust by pressurized fresh air booths, wearing approved respirators, wetting down the materials, a local ventilation system, or a combination of two or more of these devices.

Medical Examinations

As a further means of preventing silicosis and other dust diseases of the lungs, mining laws (and certain other legislation relating to dust-exposure occupations) require pre-employment and periodical examinations of workmen exposed to dust.⁵

In all mining provinces except Nova Scotia, and in the Yukon and Northwest Territories, workmen employed underground in mines (and in certain surface occupations in some provinces) are required to have a pre-employment medical examination or to be examined within a specified period after being employed. No examination is required for coal miners in British Columbia. In all provinces except Alberta, such workmen must be re-examined annually. Workmen may be employed only if they have a medical certificate of fitness for such work.

The medical examination prior to employment and periodically thereafter is particularly designed to discover evidence of active or latent tuberculosis. A workman who has or has had tuberculosis is excluded from work in silica exposure both for his own protection and for the protection of his fellow workmen, since silicosis predisposes to the development of tuberculosis and also since a tubercular workman is susceptible to silicosis.

In a number of the provinces (British Columbia, Ontario and Quebec) the Workmen's Compensation Board supervises or is responsible for the carrying out of the provisions of the mining laws requiring medical examination of miners.⁶ The British Columbia Board has authority to order employers in any industry under the Workmen's Compensation Act in which an industrial disease has been shown to exist to have each new workman medically examined within one month after starting work and thereafter at such intervals as it may direct.

In Alberta, the Coal Mines Regulation Act states that a person who has not previously been employed in a mine in the province must, before commencing such employment, present a medical practitioner's certificate "in a form satisfactory to the Workmen's Compensation Board", certifying that his eyesight is satisfactory and that he is physically fit to work in the mine.

In 1955 provision was made in regulations under the Alberta Public Health Act for medical examinations of workmen in a wide range of dust-exposure occupations, including mining, by officials or a hospital designated by the Provincial Board of Health.

⁵ Statistics filed with the McGillivray Royal Commission by the Ontario Mining Association indicated an abrupt change in the incidence of silicosis coincidentally with the introduction in 1929 of X-ray examinations of the chest pursuant to the Mining Act (p. 137).

⁶ As indicated in the text, the examination of miners in Alberta and Manitoba is conducted by medical officers designated by the provincial Minister or Board of Health; in Newfoundland, medical examiners are also appointed by the Minister of Health; the legislation of Saskatchewan and the Territories states that the examination is to be given by a registered medical practitioner (in the Yukon, one designated by the Commissioner). In New Brunswick, the annual examination is carried out by a physician selected by the employer.

The regulations require all persons engaged in listed occupations involving exposure to free silica, asbestos or organic dusts to have a medical examination, including a chest X-ray, at least once every two years.

The occupations listed involving exposure to silica dust include hard rock mining and coal mining; rock and gravel crushing; sandblasting; demolition; tunnelling; cement making; foundry work; steel making; brick, tile, pottery and ceramics making; gravel road maintenance; street sweeping; concrete making and breaking; glass making; and fertilizer manufacturing.

Occupations involving exposure to asbestos dusts include those of insulation workers, demolition workers and asbestos processors.

Each workman engaged in a listed occupation must furnish a certificate to the person in charge of the work indicating that he has had an examination, as required. The person in charge of the work may not permit any workman who does not comply with the regulations to continue in employment.

The Ontario Workmen's Compensation Act (Section 116 (9)) places upon the Board the responsibility of appointing medical officers to conduct the pre-employment and periodical examinations of miners required under the Mining Act. The remuneration and expenses of such medical officers are paid out of the rates imposed for payment of silicosis claims. Chest examining stations have been established in Sudbury, Kirkland Lake, Timmins, Elliot Lake and Fort William. In other mining areas examinations are conducted by a travelling medical officer.

An applicant for employment in a dust-exposure occupation must be examined by a doctor appointed under the Workmen's Compensation Act (at a chest examining station or otherwise) and must obtain a certificate stating that he has been found free from disease of the respiratory organs and otherwise fit for employment. At the end of a year his initial certificate may be extended upon the same terms. At the end of two years, if found free from tuberculosis of the respiratory organs, he is given a miner's certificate. This certificate is renewed each year upon the passing of the necessary examination.

Also designed to prevent silicosis is the Ontario Silicosis Act, which requires pre-employment medical examination and re-examination at 18-month intervals of employees exposed to silica dust in employments other than mining. These include foundry work, pottery making and the monument industries. The examinations are conducted by the Environmental Health Branch of the Ontario Department of Health. No employee is permitted to work in a process involving silica exposure without a health certificate issued after examination.

The Quebec Workmen's Compensation Act (Section 109) authorizes the Commission to set up clinics and to require workmen who are exposed to the inhalation of silica dust to undergo medical examination.

By regulations under the Mining Act, pre-employment examinations and annual re-examinations are required for workmen engaged in underground work, and in surface work in rock- or ore-crushing processes, in

gold, asbestos, copper and other base metal mines. The examinations are conducted by physicians in charge of clinics established under the Workmen's Compensation Act.

Three clinics for the prevention of silicosis and asbestosis have been set up at Noranda, Bourlaimaque and Thetford Mines.

The expenditure incurred for the clinics is paid from the Accident Fund and is levied by an addition to the assessment of the class or subclass to which the employers of the workmen for whom such clinics are established belong.

In British Columbia, the annual medical examination of miners which has been required under the law governing metal mines since 1936 has been carried out under the supervision of the Workmen's Compensation Board.

The Board was empowered to prescribe the nature of the medical examination, the information to be obtained and recorded, and the form of the certificate of fitness to be issued to a workman who was found fit for employment underground. The examining doctor was obliged to furnish the Board with information as to the workman's condition.

In 1954 a similar provision was inserted in the Workmen's Compensation Act which gave the Board authority to require an employer in *any* industry in which an industrial disease occurred, the presence of which was evidenced by specific X-ray appearance, to have his workmen medically examined, at his own expense, at least once a year, and to direct him to employ only workmen who were found to be physically suited for employment in the industry.

This provision was broadened in 1959, with the deletion of the reference to specific X-ray appearance, in line with the change made in the definition of "silicosis". As re-enacted, it enabled the Board to require medical examination of workmen "in any industry in which an industrial disease has been shown to exist" within one month from the date of entering employment and at such intervals thereafter as it may direct. The Board was also given authority to cancel a certificate given by a physician or in its discretion to issue a certificate to a workman.

Under this authority, the Board has made regulations requiring employers of workmen employed in asbestos mines, the construction of underground rock tunnels and the metalliferous mining industry to have them medically examined within one month from the date of entering employment and annually thereafter. The examinations are to be carried out by a qualified doctor selected by the employer. Each examination is to include a chest X-ray. The regulations specify the occupational categories in these industries in which medical examinations are required.

No workman may be employed in any of the listed occupational categories unless he holds a valid certificate of fitness, issued after examination and X-ray.

A person who has not previously held a certificate of fitness is given a temporary certificate, valid for two

months. His X-ray and full particulars of his employment record and medical examination (a form completed by the employer and examining doctor) are forwarded to the Board and examined by its Silicosis Referee, who makes recommendations to the examining doctor as to the issuance or non-issuance of a certificate.

If the workman is found to be free from disease of the respiratory system and fit for the work in question, he is given a certificate of fitness valid for one year. Thereafter, to continue in employment in the occupation, he must be re-examined and X-rayed annually and certified to be fit for work. All yearly X-rays and reports of the workman's employment record and medical examination are submitted to and examined by the Silicosis Referees.

If the physician finds that the condition of any workman due to disease of the respiratory organs is such that his employment endangers the health of other workmen, he must promptly notify the employer and the Board. Upon receipt of such notice, the employer must terminate the employment.

The employer is required to keep in his custody the certificates of fitness of all workmen employed by him who require medical and X-ray examinations, and to make these available to an inspector for checking against the payroll.

In New Brunswick, the obligations placed on employers under mining legislation regarding annual medical examinations of their workmen are the same as in British Columbia, and the medical programme provided for is carried out under the supervision of the Board. All medical examinations must include a chest X-ray. Employers in mines (other than coal), crushing plants and metallurgical works have a period of 90 days in which to secure a certificate of fitness for a newly hired employee. The annual examination is carried out by a physician selected by the employer, and the Board carries out a survey at least every five years.

The Manitoba Workmen's Compensation Act states that no person may be employed in an industry within Part I at an occupation where silicosis may be contracted unless he has complied with the Public Health Act and regulations.

Regulations under the Public Health Act require a workman in a prescribed dust-exposure occupation to be medically examined within 60 days after entering employment and annually thereafter, and make a certificate of fitness a prerequisite for obtaining a licence to work in a dust-exposure occupation. The Minister of Health may revoke or suspend the licence of a workman if the report of an examination indicates that he is physically unfit to engage in the prescribed occupation. It is stipulated that an X-ray is required on the first examination.

"Prescribed occupations" under the regulations are hard rock mining, stone cutting, metal foundry work, hard rock drilling and crushing, any industry in which workers are exposed to silica dust in the use of abrasive equipment, and any industry in which workers handle or use asbestos in any form.

The regulations provide that medical examinations are to be conducted by a physician designated by the Minister of Health.

The Workmen's Compensation Act authorizes the Board to make an agreement with the Government or any person for the purpose of carrying out the examinations required under the Public Health Act and regulations. Under an arrangement between the provincial Department of Health and the Board, the Department of Health conducts the initial examinations and annual X-ray survey, with the Board paying an agreed amount in respect of each X-ray.

The Nova Scotia Act was amended in 1959, in line with a recommendation of the McKinnon Commission, empowering the Board to make regulations, subject to the approval of the Lieutenant-Governor in Council, providing for periodical X-ray examinations of workmen exposed to silica dust or coal dust and the issue of certificates of fitness following such examinations. No regulations have been made.

The Newfoundland, New Brunswick and Prince Edward Island Boards may by order in writing require a workman in any employment to undergo a medical examination to determine if he has an industrial disease and, if so, the progress of such disease. If the workman fails or refuses to be examined, as required, the employer may not continue to employ him.

Silicosis Referees

For the diagnosis of silicosis, a number of the provinces have made provision for the examination of workmen by specially trained and independent medical personnel.

As already noted, the Silicosis Referees of the British Columbia Board examine all X-ray films of workmen for whom medical examinations are required. All claims for silicosis are referred to the Silicosis Referees for diagnosis and assessment of disability.

In dealing with claims for compensation for silicosis, the Ontario Board acts upon the reports and advice of the Silicosis Referee Board, which is composed of three specialists appointed by the Board in consultation with the Department of Health.

A workman whose medical examination shows evidence of the effects of dust is referred to the Silicosis Referee Board for further examination and review of the X-ray and other data concerning his case. The Silicosis Referee Board reports to the Board its findings and opinions as to whether or not silicosis is present and, if so, the degree of disability.

In 1936, when the silicosis provisions were added to the Manitoba Act, a permanent independent Silicosis Board consisting of three competent physicians was established to pass upon all silicosis claims. By the terms of the statute, the findings of the Silicosis Board are to be final as regards the diagnosis of silicosis.

In Quebec, a workman who presents a pneumoconiosis claim to the Commission is examined by a committee of five specialists in lung diseases, and the Commission acts according to the recommendations of this Pneumoconiosis Committee.

There is also authority in the Nova Scotia Act for the Board to employ "qualified medical experts or consultants" to assist it in dealing with silicosis and coal miners' pneumoconiosis claims.

Silicosis Funds

In Alberta, British Columbia and Ontario, the Board maintains a Silicosis Fund or Reserve, made up of assessments on the payrolls of employers in the mining industry. From this Fund all payments on account of silicosis are made. The Alberta and British Columbia Boards are required by statute to provide a separate Silicosis Fund (Section 63 (1) (e) of the Alberta Act and Section 35 of the British Columbia Act). There is no special provision requiring the creation of a Silicosis Fund in the Ontario Act.

For purposes of the Fund, the British Columbia Board has authority to levy assessments on the metalliferous and coal mining industries and on any other industries in which it may determine that workmen are exposed to silica dust. The Tysoe Report (p. 264) indicated that only the mining industry is subject to assessments for the Silicosis Fund. In Alberta, a charge may be made upon such classes as the Board may from time to time determine. In practice, only classes that have experienced silicosis as an industrial disease are required to make contributions to the Reserve for Silicosis.

In British Columbia, the special silicosis rate levied in 1966 on the coal mining industry was \$1.25 per \$100

of payroll and on the metalliferous mining industry \$2.50 per \$100 of payroll. This was in addition to the regular assessment rates of \$6 and \$4.25 per \$100 of payroll, respectively, levied on these industries.

Annual reports of the Ontario Board indicate that separate funds are accumulated for asbestosis and silicosis. Silicosis rates for the mining industry in 1967 were 15 cents per \$100 of payroll for mining nickel, 20 cents for mining iron, 50 cents for mining uranium, \$3 for mining gold and \$7 for mining nepheline syenite. Assessment rates for mining, exclusive of silicosis rates, range from \$1.50 to \$7 per \$100 of payroll.

In Manitoba, a special Silicosis Fund was established by assessments levied on mining and foundry employers during the period 1936 to 1951. In 1951 silicosis contracted in any industry under Part I was made compensable, instead of silicosis in mining and foundry work only. The Silicosis Fund was "frozen" and has since been used only for the payment of silicosis claims which arose out of employment in the mining and foundry industries before 1951. Silicosis claims are now paid out of ordinary assessments.

Annual Reports of the New Brunswick Board show that the Board maintains both a Pneumoconiosis Reserve and a Silicosis Reserve.

CHAPTER VII

Coverage and Scope of Laws

The coverage of the provincial Workmen's Compensation Acts is limited to enumerated employments. Coverage of any workman under the statute is therefore determined by reference to the industry, occupation or type of work in which he is engaged.

The laws were initially made applicable to the industrial employments considered to be most hazardous. Coverage has, however, been extended to other employments with less risk of work injury, with the result that the range of covered industries is now very wide, particularly in some provinces.

The Acts apply to employment "connected with" or "incidental to" the industries and undertakings listed as within the scope of the Act.

All employees in an industry under the Act, whether full-time or part-time, are covered, including office workers and supervisory personnel.

Industries and occupations not within the compulsory coverage of the Act may be brought within it by determination of the Board, or in three of the provinces — Newfoundland, New Brunswick and Saskatchewan — by the Lieutenant-Governor in Council, on the recommendation of the Board. For example, Section 4 of the British Columbia Act states that Part I applies to employers and workmen in or about the industries listed and "in or about such other industries or occupations as may be determined by the Board."

In addition to compulsory coverage, there is provision in all provinces for elective coverage, at the discretion of the Board. An employer engaged in an undertaking not within the scope of the Act may apply to the Board to have his workmen covered, whereupon, on payment of the required assessment, coverage may be granted. In this way, employers in non-covered industries may avail themselves of the protection of the law, and many undertakings are brought under the Acts on application of the employer. Most excluded industries may apply for voluntary coverage.

Coverage of the self-employed — referred to as "independent operators" — is provided for in British Columbia and Ontario. Independent operators in the fishing industry may be covered in Newfoundland (see p. 54).

Lists of covered industries are steadily being expanded. The coverage of the Ontario Act was greatly extended by the compulsory inclusion of farm workers from January 1, 1966. Deep sea fishermen were brought under the Newfoundland Act from July 1, 1967.

An amendment in 1963 made provision for extending the scope of the Quebec Act. It repealed the section that limited the coverage of the Act to the industries named in the schedules, and provided that the repeal would take effect on proclamation. A plan, prepared by the Workmen's Compensation Commission, that will

bring under the Act practically all non-covered employments within a period of five years was announced in the Legislature by the Minister of Labour on August 3, 1967. The plan called for the inclusion of six lists of undertakings, the first group from October 1, 1967, the second group from October 1, 1968, and so on, with the last group being made subject to the Act from October 1, 1972. In all, over 400,000 employees and over 81,000 establishments not previously covered will be given the protection of the law.

The first group of undertakings brought under the Act in accordance with the plan, as of October 1, 1967, included hotels, motels and other lodging places, restaurants and catering services, taverns, night clubs, operation of stations and terminals, beauty salons, chiroprapist services, turkish baths and shoe-shining establishments.

As a fairly representative listing of the industries covered by the provincial Workmen's Compensation Acts, the application of the New Brunswick Act is set out below. A more detailed listing of the industries and occupations covered, divided into five classes for assessment purposes, is set forth in the regulations. New Brunswick Workmen's Compensation Act — Section 2

This Part applies to employers and workmen in or about the following industries:

- (a) the lumbering industry including employment in lumber and fuel yards and in the woods in logging, cutting of timber, pulpwood, firewood, pitprops, railroad ties and sleepers, and in river driving, rafting, booming, and the transportation of logs, timber, pulpwood, firewood, pitprops, railroad ties and sleepers,
- (b) the fishing industry,
- (c) the mining industry including quarrying and employment in coal yards,
- (d) the construction industry including engineering, well drilling, road making, building, and ship building,
- (e) the manufacturing industry including the operations of a canning factory,
- (f) the operation of any transportation, railway or tramway system including stevedoring and navigation,
- (g) the operation of any storage or terminal warehouse, elevator or refrigeration plant,
- (h) the operation of any passenger or freight elevator,
- (i) the operation of any telegraph, telephone, cable, electric light, power line or system, water works, gas works or sewage plant or system or other public utility,

- (j) the operation of any television or radio or broadcasting station and any theatre or place of public amusement,
- (k) the operation of any wholesale or retail store including the operations of coal or wood merchants,
- (l) the operation of any hospital, hotel, restaurant or laundry,
- (m) the undertakings of all municipal corporations including police or fire departments or municipal volunteer fire brigades,
- (n) the employment with school boards or vocational committees as home economics teachers, industrial teachers, shop teachers, maintenance employees, caretakers and bus operators,
- (o) employment in the plumbing or printing trade,

- (p) employment in scavenging, street cleaning, window cleaning or caretaking,
- (q) employment in the handling of hides, and
- (r) employment in teaming, trucking and horseshoeing.

As indicated in the example given above, almost all industrial undertakings with the exception of agriculture are within the scope of the Acts. Generally speaking, the Acts apply to the main classes of commercial establishments (shops, hotels, restaurants) and to hospitals but they apply to a lesser extent to other service industries.

The extend of compulsory coverage of workmen in selected industries is shown below. A complete list of the industries and occupations covered in each province appears in the Act or regulations, and also in the Table of Assessment Rates issued yearly by each Board.

COMPULSORY COVERAGE OF SELECTED INDUSTRIES

Wholesale and retail stores	— all provinces except Quebec (Quebec from October 1, 1970)
Hotels	— all provinces (Newfoundland, if there are 10 or more bedrooms; Alberta, if at least 4 workmen are employed)
Lodging houses	— British Columbia and Newfoundland (in each case, if there are 10 or more bedrooms) and Quebec
Motels	— British Columbia, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan
Restaurants	— all provinces
Taverns	— British Columbia, Newfoundland, New Brunswick and Quebec
Hospitals	— all provinces (Prince Edward Island, in government-administered hospitals only)
Nursing homes	— Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan (Quebec from October 1, 1969)
Welfare homes, homes for the aged	— Nova Scotia and Saskatchewan (Quebec from October 1, 1969)
Theatres	— all provinces
Broadcasting stations	— Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island (Quebec from October 1, 1969)
Laundries and dry cleaning establishments	— all provinces
Garages and service stations	— all provinces
Barber shops and beauty parlours	— British Columbia and Newfoundland (in Newfoundland, if at least 10 workmen are employed) (Quebec — beauty parlours only)
Funeral homes	— British Columbia and Saskatchewan (Quebec from October 1, 1969)
Photographers' shops	— British Columbia and Saskatchewan (Quebec from October 1, 1969)
Janitor and caretaking services	— British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Saskatchewan (Saskatchewan — cities and towns only) (Quebec from October 1, 1969)
Places of amusement (type and extent varying with each of the Acts)	— British Columbia, Newfoundland, New Brunswick and Prince Edward Island (Quebec from October 1, 1971)

Compulsory Coverage of Selected Industries, continued

Transportation Industries

Railway	— all provinces
Air	— Alberta, British Columbia, Manitoba and Ontario; New Brunswick (if at least 10 workmen are employed); Prince Edward Island (if at least 100 workmen are employed) Excluded but covered by application — Newfoundland, Nova Scotia, Quebec and Saskatchewan
Boat and vessel ¹	— Alberta, British Columbia, Manitoba, Ontario and Quebec; New Brunswick (if at least 500 workmen are employed in navigation to points outside the province, and if at least 10 workmen are employed in coastal and river trade); Prince Edward Island (if at least 200 workmen are employed) Excluded — Newfoundland (except for government vessels), Nova Scotia and Saskatchewan
Trucking	— all provinces
Express companies	— British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan
Bus	— All provinces but Quebec (Quebec from October 1, 1968)
Taxi service	— British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan; Newfoundland (if at least 10 workmen are employed); Prince Edward Island (if at least 25 workmen are employed) (Quebec from October 1, 1968) Excluded — Alberta

To sum up the extent of the employment not covered by workmen's compensation laws, one has first to look at the enumerated industries. Employments not included in the enumerated industries are outside the scope of the Act, as are those expressly exempted by the Act or regulations. As indicated below, in four provinces small workplaces in industries within the Act are excluded. In some provinces some industries and occupations are covered, subject to certain numerical exemptions.

Among the groups of workers without protection are farm workers (who are covered only in Ontario), domestic servants, outworkers or homeworkers, and casual workers (those not employed in the regular course of the employer's trade or business). Other workers not under the Acts are employees of banks, trust companies, insurance companies, real estate companies, and other undertakings in which office work as a business, as opposed to office work connected with an industry under the Act, is carried on. Workers in offices of members of various professions and those employed by non-profit religious, charitable, social or fraternal organizations are not usually protected. Banks, trust companies, insurance companies and other financial undertakings are to come under the Quebec Act from October 1, 1971.

Professional workers are covered to a very limited extent. In Ontario, the business of accountants, architects, draftsmen or engineers has been brought within

the Act, as well as that of consultants, engineers, geologists, geochemists and geophysicists in the mining industry. Surveyors, architects and consulting engineers are under the Saskatchewan Act. Operations of civil engineers and consulting engineers are covered in Newfoundland.

The University of Saskatchewan is covered by the Saskatchewan Act, as are educational institutions with boarding schools in all cities and towns. Employment by the University of Alberta and the University Hospital is subject to the Alberta Act. Colleges and universities are covered in British Columbia. With these exceptions, educational institutions, except for school boards, are not covered. The Saskatchewan Act expressly states that it does not apply to school teachers.

Under the Quebec plan to extend the coverage of the Act over a five-year period, universities are to be covered from October 1, 1970. Members of various professions will be granted coverage from October 1, 1972.

NUMERICAL EXEMPTIONS

In all provinces but Alberta and British Columbia, the Board has power to exclude small industries by regulation. An amendment to the Quebec Act in 1963 removed the power of the Commission to exclude from the Act any industry in which not more than a stated number of workmen are usually employed. This provision has not been proclaimed in force, but all regulations excluding specific industries by number limit were repealed from January 1, 1964.

The Manitoba and Ontario Boards permit no exemptions based on the number of workmen employed.

¹ See also discussion of coverage of seamen by federal Merchant Seamen Compensation Act (p. 52).

The Boards of the four Atlantic provinces exempt industries with fewer than a stipulated number of employees. The Nova Scotia Board exempts all industries with fewer than 5 workmen, and the Newfoundland, New Brunswick and Prince Edward Island Boards exempt all undertakings with fewer than 3 workmen.

In addition to these numerical exclusions covering all industries within the scope of the Act, specific industries are excluded in Newfoundland, New Brunswick, Prince Edward Island and Saskatchewan unless a stated number of workmen are usually employed. In Newfoundland, barber shops, beauty parlours, taxi businesses, window cleaning and scavenging (junk-dealing) are not covered unless at least 10 workmen are employed. Newfoundland fishermen who are employed for wages in the inshore fisheries are not protected by the Act unless at least 10 workmen are employed.

In Prince Edward Island, scavenging is exempted unless at least 10 workmen are employed and the taxi business is excluded unless at least 25 persons are employed.

In New Brunswick, the fishing industry is exempt unless at least 50 workmen are employed; for hand laundries to be covered at least 10 workmen must be employed.

The only numerical exemptions in Saskatchewan are for drilling wells for water, and mining, other than coal, including prospecting and development work. In these industries employers with fewer than 6 workmen are outside the scope of the Act.

In New Brunswick and Prince Edward Island, navigation and aerial transportation are exempted unless a stated number of workmen are employed, but the minimum number of employees specified for coverage in these two industries in Prince Edward Island and in navigation in New Brunswick is so great as to be tantamount to exclusion of the industry from the Act.

Transportation by boat or vessel to points outside the province is excluded in Prince Edward Island unless at least 200 workmen are employed and in New Brunswick unless at least 500 workmen are employed. For the coastal or river trade in New Brunswick, the minimum number specified for coverage is 10.

In Alberta, small undertakings are excluded from coverage by virtue of the definitions of "hotel", "restaurant", "retail store" and "commercial greenhouse" laid down in the regulations. The Board has power to define any of the industries contained in the schedule and to decide whether any establishment is or is not an industry to which the Act applies.

As an example of these definitions, a hotel is an industry within the scope of the Act only if in its operation four or more workmen are employed and meals and lodging accommodation are offered to the public for a consideration, or if a licence has been granted by the Alberta Liquor Control Board and one or more workmen are employed.

In all these provinces an industry excluded by regulation by reason of the small number employed may be readmitted by the Board. Any industry so excluded in Prince Edward Island may, on the written application of

the employer or any workman, be brought within the operation of the Act. In Saskatchewan, an application by an employer or workman to have the industry readmitted requires the approval of the Board.

PUBLIC EMPLOYEES

Federal Government Employees

Federal government employees (excluding members of the Armed Forces and the Royal Canadian Mounted Police) and employees of Crown companies, government boards and agencies are covered by the Government Employees Compensation Act, a federal statute first enacted in 1918. Under this Act an employee (as defined) is entitled to compensation, medical and hospital expenses and other benefits for personal injury caused by an accident arising out of and in the course of his employment or for disablement caused by an industrial disease due to the nature of his employment.

The general principle underlying the Act is that an employee of the Crown is to receive the benefits of the Workmen's Compensation Act of the province in which he is usually employed. Thus, a federal government employee employed in Manitoba is paid compensation according to the scale of benefits payable under the Manitoba Act, and an employee employed in British Columbia according to the British Columbia scale of benefits.

A federal government employee who is usually employed in the Yukon Territory or the Northwest Territories is considered, for the purposes of the Act, to be usually employed in the province of Alberta, and his claim is handled by the Alberta Board. An employee (other than a person locally engaged outside Canada) who is usually employed outside Canada is considered to be usually employed in Ontario. Claims of such employees are dealt with by the Ontario Board, and compensation is paid according to the Ontario scale of benefits.

"Employee" is defined to cover persons paid a direct wage or salary by or on behalf of Her Majesty, and also the members, officers and employees of any board, commission or corporation established to perform a function or duty on behalf of the Government of Canada who have been declared by the Minister of Labour, with the approval of the Governor in Council, to be "employees" for the purposes of the Act. The employees of all departments and agencies of the public service, both in Canada and abroad, are covered by the Act.

The Minister of Labour is responsible for the administration of the Act.

The Act as passed enabled the federal Government to establish its own machinery for the adjudication of claims or to use the services of the provincial Workmen's Compensation Boards. It elected to make use of the services of the provincial Workmen's Compensation Boards.

Under this arrangement, the Workmen's Compensation Board in the province concerned determines the right of a federal government employee to compensation and, if he is so entitled, the amount of compensation

payable. It pays compensation and other costs from a deposit account maintained with it by the federal Government.

The federal Government pays all costs with respect to compensation for injuries to its own employees. It also pays a share of the total administrative costs of each Board, in proportion to the number of accidents to its employees. It does not contribute to the collective liability system in any province.

Federal government employees or their dependants are eligible for compensation under the Government Employees Compensation Act for accidents arising out of and in the course of their employment, whether or not persons in that class of employment would be eligible under the provincial Act concerned. For example, agricultural workers are covered by the Act even though they may not be covered under a provincial Act.

Where an injury is such as to disable an employee beyond the "waiting period" required by the provincial Act concerned, he is entitled to benefits in accordance with the scale provided in that Act. An employee whose claim is allowed by the Board is entitled to all necessary medical, hospital and rehabilitation services. Compensation is also payable for damage to artificial appliances, so long as the accident caused personal injury.

A federal government employee is entitled to benefits if he is disabled by an industrial disease (any disease for which compensation is payable under the law of the province where the employee is usually employed) or a disease that is due to the nature of his employment and peculiar to or characteristic of the particular process, trade or occupation in which he was employed at the time the disease was contracted. In the latter case, the employee or his dependants are entitled to compensation, whether or not the disease is recognized as an industrial disease under the law of the province in which the employee is usually employed.

The Minister of Labour has authority to promote accident prevention activities in the public service. Promotion of safety programs by government departments and agencies and administrative duties under the Act are carried out by the Accident Prevention and Compensation Branch of the Canada Department of Labour.

Provision is made in the Act, as in the provincial Acts, for third party actions. If an employee is injured by accident arising out of his employment and a third party is alleged to be responsible, the employee has the right to elect either to claim compensation or to bring an action against the third party.

If he brings an action and recovers less than the amount to which he was entitled under the Act, he is paid the difference between the sum which he obtains through court action and the amount of compensation for which he was eligible.

If, on the other hand, the employee chooses to claim compensation, the Crown is subrogated to his rights and may bring an action against the third party on his behalf. If, in any such action brought by the Crown, the amount recovered from the third party is in excess of the compensation paid, the excess amount, less a charge

for legal costs and administrative expenses, may, on the recommendation of the Minister of Labour, be paid to the employee or his dependants.

Provincial Government Employees

In all provinces employees of the provincial Government are covered by the Workmen's Compensation Act. (In Newfoundland, all provincial government employees other than civil servants are within the scope of the Act). In nine provinces any permanent board or commission appointed by the Government of the province is also covered. In Manitoba, any such board or commission may apply for coverage under the elective provisions of the Act.

In Ontario and Quebec, employment by the provincial government or any permanent government board or commission is included in Schedule 2 of the Acts, which list the industries in which the employer is individually liable to pay compensation and medical aid costs. An exception in Quebec is the Quebec Hydro-Electric Commission, which was transferred from Schedule 2 to Schedule 1 in 1965, in view of the fact that the power companies that had become affiliated with it in accordance with the nationalization of electricity were included in Schedule 1.

In other provinces, as in Ontario and Quebec, the Government does not contribute to the Accident Fund and pays all compensation costs with regard to its own employees. The amount of compensation payable and all other questions relating to the adjudication of a claim are determined by the Workmen's Compensation Board, as in the case of accidents for which compensation is paid from the Accident Fund.

Municipal Government Employees

Employees of municipal governments are protected under all the Acts. In Prince Edward Island, coverage is by application and not all classes of employees are covered.

In Ontario, employment by municipal corporations, or boards and commissions operated for municipal purposes, except hospital boards, is, like employment by or for the provincial Government, included in Schedule 2 of the Act. That is, the municipality is individually liable to pay the costs of compensation and medical aid to injured workmen in its employ.

In Quebec, employment by municipal corporations and municipal boards and commissions, including school boards, is also in Schedule 2 of the Act. Since 1966, however, municipal and school corporations may, on request in writing, be transferred from Schedule 2 to Schedule 1.² The by-law of the Commission permitting such transfers noted that several municipal and school

² See also the Table of Rates of the Ontario Workmen's Compensation Board, which includes in Class 22 "Business of municipalities transferred from Schedule 2 to Schedule 1 by application (including all activities except electric or telephones)".

corporations had found themselves in a difficult situation with respect to the payment of compensation and had asked the Commission to give them the protection of the collective liability system.

In Manitoba, the Metropolitan Corporation of Greater Winnipeg and the City of Winnipeg each constitute a separate class and are self-insurers (that is, they carry their own compensation costs). Other municipalities contribute to the Accident Fund.

In the other provinces municipal corporations, boards and commissions pay assessments to the Accident Fund.

Most of the Acts refer to the municipal corporation as the employer. The Alberta Act refers specifically to employment by cities, towns, villages, municipal districts and counties. The Saskatchewan Act covers cities, towns, villages, counties and rural municipalities. "Employer", as defined in the New Brunswick Act, includes "a municipal corporation, commission, committee, body or other local authority established or exercising any powers or authority with respect to the affairs or purposes, including school purposes, of a municipality".

Municipal boards and commissions having the management and conduct of any work or service owned by or operated for a municipal corporation are specifically mentioned as being within the scope of the Act in British Columbia, Manitoba, New Brunswick, Ontario, Quebec and Saskatchewan. Examples of such boards and commissions are public utilities commissions, library boards, parks, water, cemetery and town planning boards. (As already indicated, these are included in Schedule 2 in Ontario and Quebec, unless transferred by application).

Employment by school divisions and city school boards or districts is covered in Alberta. Municipal school boards are within the scope of the British Columbia, Ontario, Quebec and Saskatchewan Acts (in Ontario and Quebec, in Schedule 2). The New Brunswick Act applies to the employment with school boards or vocational committees of home economics teachers, industrial teachers, shop teachers, maintenance employees, caretakers and bus operators. In Manitoba, the operation of a board of school trustees is excluded by regulation but may be admitted to coverage on application.

In Saskatchewan, the obligation to pay compensation with respect to employment by a municipal corporation (other than a rural municipality), a school board, a public utilities commission or board or any board or commission having the management and conduct of any work or service owned by or operated for a municipal corporation or by or for the province applies only to such employment as would be within the scope of the Act if carried on by a private employer.

Elected officials of a municipality are not covered by the Act of any province, except for officials of rural municipalities in Saskatchewan. The Newfoundland, Nova Scotia and Prince Edward Island Acts give the Board authority to exclude the mayor, councillors, aldermen and other officers of a city, town or municipality, and in Nova Scotia and Prince Edward Island regulations have been made excluding such officials. The

Prince Edward Island Act, however, permits coverage of elected officials of a municipality on application. In Alberta, an application for coverage may be made by resolution of the council of any incorporated city, town, village, county or municipal district. On the approval of the application, members of the council are deemed to be workmen while engaged in the business of the corporate body, which is deemed to be the employer.

Reeves, councillors and secretary-treasurers of rural municipalities are covered on a compulsory basis under the Saskatchewan Act, together with such other employees as the Board may designate. The annual earnings of such persons for purposes of compensation are deemed to be \$1,200 but this amount may be increased or decreased by the Lieutenant-Governor in Council, on the recommendation of the Board. For purposes of the Act, the reeve and councillors of a rural municipality are deemed employees of the municipality.

Municipal policemen and firemen are within the scope of the Act except in Nova Scotia and Prince Edward Island. In these two provinces they are excluded but they may be brought under the Act on the application of the employer (the municipal corporation).³

Provision is made in the Acts of eight provinces for coverage of members of a municipal volunteer fire brigade. In British Columbia, Manitoba, New Brunswick and Ontario, coverage is compulsory; in Newfoundland, Nova Scotia and Saskatchewan, coverage is on an elective basis, on the application of the municipality concerned. The Alberta provision, although designed to cover volunteer fire-fighters, is expressed in general terms, enabling the Board to bring within the scope of the Act "volunteer employments undertaken in the public interest and in which the remuneration, if any, is nominal." In this province also, coverage is on a voluntary basis.

In Manitoba, the average earnings of a member of a municipal volunteer fire brigade, for purposes of compensation, are deemed to be the same as his average earnings in his regular employment, subject to a minimum of \$25 a week and a maximum of \$6,600 a year. The British Columbia Board has set \$75 a month as the minimum average earnings of a volunteer fireman, working with or without remuneration. Where a higher nominal payment is made or where the municipality has arranged with the Board for a higher earnings basis, compensation is based on such higher earnings.

In Newfoundland, Nova Scotia and Ontario, the municipal corporation must notify the Board annually of the number of members of the brigade and specify the earnings basis on which protection is to be provided, subject to the limits laid down in the Act (in Newfoundland, not less than \$2,500 and not more than \$5,000 a year; in Nova Scotia, not less than \$2,000 and not more than \$3,600; and in Ontario, not less than \$2,500 and not more than \$6,000).

³Policemen employed by the City of Charlottetown are covered but firemen are not protected.

In Manitoba, persons who are ordered under the authority of the Fires Prevention Act to help extinguish a forest, brush or grass fire or who assist in fighting fires under the direction of a fire guardian, conservation officer or the chief of a municipal fire department or brigade are covered by the Act, under the same conditions as regards average earnings as the members of a municipal volunteer fire brigade.

FARM WORKERS

Ontario

Ontario brought agricultural workers within the compulsory coverage of the Act from January 1, 1966. A total of 26,637 farm employers had reported to the Board by December 31, 1966.

All farmers in the province who employ full-time or part-time help are required to provide protection for their employees. Employers may obtain coverage for themselves and their wives by application and on payment of the required assessment. Coverage is effective from the date the application is received by the Board. Other family members are covered if they are shown on the payroll as receiving a stated wage.

Self-employed farmers with no workmen may be covered, at their option, under the "independent operator" provisions of the Act. Coverage of a farmer or his wife may be requested at any amount between \$2,500 and \$6,000 a year.

For purposes of assessment, the industry of farming was placed in a separate class (Class 27); the class is divided into two subclasses or groups.

One group consists of the operation of tobacco farms, mushroom farms, fur farms, fruit farms other than tree fruits, chicken farms, turkey farms, chick hatcheries, apiaries, nurseries, market gardens and mechanical cultivators, and the production of flowers for sale. For this classification the assessment rate is \$1 per \$100 of payroll.

The other group covers more hazardous farming operations. It consists of the operation of general farms, tree fruit farms, Christmas tree farms, dairy farms, stock farms, horse farms, clover mills, ensilage cutters, hay baling machines and threshing machines, farm drainage as a business and the production of cash crops that are mechanically harvested. The assessment rate for this classification is \$3.50 per \$100 of payroll.

Other Provinces

In the other provinces, farm workers are not compulsorily covered but in most of these provinces it is possible for the farmer-employer to come under the Act on application. The industry of farming is excluded from the Quebec Act and there is no provision for optional coverage. The Saskatchewan Board has not accepted applications for coverage of farm workers.

In Manitoba and Newfoundland, Part I of the Act (the collective liability system) is declared not to apply to farm labourers but the Acts expressly state that these employees (in Newfoundland, the industry and the em-

ployees) may be brought within the scope of the Act on the application of the employer.

The provisions in the New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan Acts are similar. Farm labourers, or in Saskatchewan "the industry of farming or ranching", are specifically excluded, along with certain other classes of employees, but such exclusions are subject to a succeeding section of the Act that provides that an industry or workman not within the scope of the collective liability system may, on the application of the employer, be admitted. In Saskatchewan, the exclusions are also made subject to a further provision that permits an industry not within the scope of the Act to be brought under the compulsory coverage of the Act by the Lieutenant-Governor in Council, on the recommendation of the Board.

In Alberta, the industry of farming or ranching may be brought under the Act on the application of the employer or at the request of a majority of the employees, with the employer's consent.

There is no mention of farm labourers in the British Columbia Act but under the Board's general power to admit an industry or workman on the application of the employer, farm labourers may be covered.

In summary, the situation regarding farm workers is as follows: in Ontario, all farm employees are covered by the Act; in Quebec, farm workers are excluded and there is no provision for coverage by application; in the other provinces, they are not protected except for the relatively few who are covered on the application of their employer.

In British Columbia, Manitoba and New Brunswick, farm workers (those who are not covered by voluntary application) are within Part II of the Act, that is, they may sue their employer for negligence with the advantages Part II gives. (The employer's common law defences are abrogated or modified).

In Alberta, Newfoundland, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan, farm workers or their dependants have recourse only to an action at common law for damages for personal injury sustained by accident arising out of their employment.

FISHERMEN

Because of its hazards, and because many fishermen have no employers and are not therefore "workmen" under the Act, the fishing industry presents difficult problems with respect to its inclusion in the collective liability system.

Nova Scotia fishermen are excluded from workmen's compensation (collective liability) and are subject to special provisions that make the employer individually liable for the payment of compensation (Part III of the Act). These provisions were enacted in 1928, after a period of experience under Part I during which several major disasters to the Lunenburg fishing fleet brought about a large deficit and made it necessary for the Board to set prohibitively high rates of assessment.

Under Part III, which applies to fishing, sealing and dredging, the employer is responsible for the payment of

compensation and is required to carry insurance to cover possible liabilities. Workmen or their dependants receive benefits on the same scale as that provided for in Part I (collective liability), except that payment for medical aid or rehabilitation is not allowed. Claims are heard and adjudicated by a county court judge.

The employer or insurance carrier is required to deposit the capitalized value of a compensation award with the Board, and the Board administers the periodical payments.

Fishermen are eligible for compensation on the basis of their actual earnings, up to a maximum of \$3,600 a year, subject to a limit of \$200,000 on the liability of an employer for claims arising from an accident to any one vessel.

This system was found to be inequitable by the McKinnon Commission. A special Commissioner was appointed in 1965 to inquire into and make recommendations regarding Part III.

In Newfoundland, deep sea fishermen were brought under the workmen's compensation scheme from July 1, 1967. Previous to that time, they were excluded from the Act and given the nominal protection of an earlier individual liability law enacted in 1948. Deep sea fishermen employed on trawlers, draggers or other vessels of 70 tons or more gross tonnage (category A vessels) are covered by the Act, whether remunerated by wages or on a share basis. Those paid by shares are deemed to be workmen within the meaning of the Act, provided the person with whom they share the profits or earnings of the vessel is deemed to be the employer. The share received by each member of the crew is deemed to be his earnings or part of his earnings, as the case may be.

Coverage of other fishermen, those who fish in small boats a mile or so offshore, depends on the number employed and the manner of payment. Masters and crew members of vessels of 10 tons or more gross tonnage (category B vessels) who are paid on a share basis are excluded from Part I, but may be covered on the joint application of the crew and the person deemed to be the employer (as above).

Fishermen employed in other than a category A vessel and paid wages are covered only if at least 10 workmen are employed.

Provision is also made for the coverage, on application, of an independent operator in the fishing industry. The latter is described as any person who, although not an employer or a workman, performs work of a nature that would be within the scope of Part I, if he were a workman, and who is remunerated wholly or mainly by shares in the profits or earnings of the fishing vessel.

In New Brunswick, the fishing industry is excluded from the Act unless at least 50 workmen are employed.

In Prince Edward Island, the fishing industry is not covered but the owners and crew of the dragger fishing fleet have been brought under the Act on application of the employer.

In British Columbia, fishermen who are employees are within the scope of the Act. A large proportion of commercial fishermen are, however, not employees but independent contractors. These are permitted optional

protection under Section 5 (2) (b) of the Act, which provides for coverage of an "independent operator", defined as a person who is neither an employer nor a workman but who carries on a trade or business to which the Act applies. Under this section, fishermen must themselves pay the assessments required to provide coverage. In 1966, slightly more than 2,000 independent fishermen were protected by the Act.

Fishing is covered by the Manitoba, Ontario and Quebec Acts; in Alberta and Saskatchewan, the industry has been excluded by regulation.

Fishermen may qualify for medical aid from the Sick Mariners' Fund under the Canada Shipping Act. Coverage of fishing vessels by the Fund is not, however, obligatory.

Where the master of a fishing vessel elects to bring his vessel under the scheme by paying the duty levied under the Act, an injured fisherman is entitled to hospital, nursing, medical and surgical care for one year for any single injury or illness occurring while he is engaged as a crew member of the vessel.

SEAMEN

Most seamen are covered by workmen's compensation legislation. Those not protected by a provincial Act have the protection of the federal Merchant Seamen Compensation Act. The latter, which dates from 1946, was enacted for the express purpose of providing coverage for merchant seamen who were not within the scope of a provincial workmen's compensation law or the Government Employees Compensation Act.

Coverage by Provincial Acts

Generally speaking, seamen in the provinces of British Columbia, Manitoba, Ontario and Quebec are within the scope of the provincial Workmen's Compensation Acts.

The Acts apply to navigation, subject to certain provisions dealing with accidents occurring outside the province. In Ontario and Quebec, the industry is in Schedule 2. Employers in Schedule 2 are individually liable for payment of compensation and medical aid costs.

In these four provinces a condition of entitlement of seamen to compensation for an accident happening outside the province on a ship or vessel is residence in the province concerned. In Quebec, compensation is payable, under specified conditions, to seamen hired in the province as well as to those resident in the province.

The conditions under which compensation is payable under the various provincial workmen's compensation laws to seamen injured in shipping accidents outside the province are set out on page 77.

The Alberta Act applies to "boat and vessel transportation". In Saskatchewan, the industry has been excluded from the Act by regulation.

Navigation has been entirely excluded from the Newfoundland and Nova Scotia Acts, and in effect excluded in New Brunswick and Prince Edward Island. Transportation by vessel to points outside the province

is excluded in New Brunswick unless at least 500 workmen are employed, and in Prince Edward Island unless at least 200 workmen are employed. Transportation by boat or vessel engaged in the coastal or river trade in New Brunswick is excluded unless at least 10 workmen are employed. (The exclusions in Newfoundland, New Brunswick and Prince Edward Island do not cover government vessels).

Merchant Seamen Compensation Act

As indicated from the above summary of the coverage of the provincial Acts, the Merchant Seamen Compensation Act applies principally to seamen from the four Atlantic provinces. It does not apply to seamen in British Columbia, Manitoba, Ontario and Quebec who are covered by the provincial Acts, or to persons employed in boat and vessel transportation in Alberta and Saskatchewan since it does not apply to voyages on the inland waters of Canada.

It would appear, however, that seamen resident in the Atlantic provinces are covered only when engaged on a foreign or home-trade voyage. Seamen resident in these provinces who are injured on an inland waters voyage have no workmen's compensation coverage, since, as already noted, the Merchant Seamen Compensation Act does not cover inland waters voyages.

Since most claims under the Merchant Seamen Compensation Act come from the Atlantic provinces, the benefits payable under it are comparable to those payable under the Workmen's Compensation Acts of those provinces.

The Merchant Seamen Compensation Act provides for the payment of compensation to "seamen" within the meaning of the Act for personal injury by accident arising out of and in the course of their employment, and to the dependants of seamen who lose their lives as a result of such accidents.

As indicated above, it does not apply where a seaman or his dependants are entitled to claim compensation under the Government Employees Compensation Act or under any provincial workmen's compensation law.

The Act is administered by the Merchant Seamen Compensation Board, which consists of three officers of the federal public service.

Under this Act, the employer (the shipping company) is liable for the payment of compensation, and is required to carry liability insurance or to cover his risk by some other means satisfactory to the Board. Compensation, in accordance with a scale set out in the Act, is paid directly by the employer.

The seamen covered are those employed on a ship of Canadian registry or one under charter to a person resident in Canada or having his principal place of business in Canada, when the ship is engaged in trading on a "foreign" or "home-trade" voyage as these voyages are defined in the Canada Shipping Act. "Home-trade voyage", as defined, covers coastal trade voyages but

does not include a voyage on the inland waters of Canada.

The coverage of the Act may be extended by order of the Governor in Council to seamen hired in Canada and employed on a ship that is registered outside of Canada, if the ship is operated by a person resident in Canada or having his principal place of business in Canada.

"Seamen", as defined in the Act, include all members of the crew. The Act does not apply to pilots, apprentices pilots and fishermen.

As in other compensation Acts, benefits payable are in lieu of the right of action for damages against the employer.

To be entitled to compensation, a seaman must be disabled from earning full wages for at least three days (the waiting period). Medical aid is provided, however, for shorter periods of injury.

Compensation for disability is based on 75 per cent of the seaman's average earnings, subject to a ceiling of \$5,000 on annual earnings. The minimum amount of compensation which an injured seaman may receive for temporary total or permanent total disability is \$25 a week, unless his average earnings are less than that amount, in which case his average earnings must be paid.

In the case of the death of a seaman from employment injury, his widow receives an immediate lump sum of \$200 and a monthly allowance of \$75 for life or until remarriage. A monthly allowance of \$25 for a child with parent or \$35 for an orphan child is payable to the age of 18 or, with the approval of the Merchant Seamen Compensation Board, to the age of 21, if the child is attending school. Necessary burial expenses not exceeding \$300 may be paid, if these are not borne by the employer in accordance with the Canada Shipping Act. In addition, a sum not exceeding \$125 may be paid for transportation and other expenses incurred in transferring the body to the place of interment.

Monthly pensions awarded to widows and dependent children in respect of earlier accidents were brought up to the current scale of benefits as of April 1, 1964. Payment of the necessary sums of money for this purpose was authorized from the Consolidated Revenue Fund.

Each shipping company pays an annual registration fee and, for administrative expenses, an amount per claim determined on the year's experience.

Seamen are entitled to medical aid under the Merchant Seamen Compensation Act but the Act stipulates that medical aid is not to be provided during the period and to the extent that it is furnished under the Canada Shipping Act.

The British Columbia, Newfoundland, New Brunswick and Prince Edward Island Acts also provide that medical aid is not payable under their provisions for any period during which seamen are entitled to benefits from the Sick Mariners' Fund. A seaman is eligible under the British Columbia Workmen's Compensation Act, however, for any additional medical aid not furnished under the Canada Shipping Act, and the Board has discretionary power to pay the medical costs of a seaman,

when for reasons beyond his control, he cannot be furnished prompt, necessary or emergent medical care under the Canada Shipping Act (p. 29).

LEARNERS

"Learners", defined as persons who, although not under a contract of service or apprenticeship, become subject to the hazards of an industry under the Act for the purpose of taking training or doing probationary work as a preliminary to employment, are eligible for compensation in nine provinces (all except Quebec).

Learners were first brought under the Manitoba Act in 1950 as a result of a decision of the Manitoba Court of Appeal⁴ in which the court held that a student trainman who was injured while undergoing training in preparation for future employment was not a "workman" within the meaning of the Act and therefore not entitled to compensation. Other provinces in turn adopted the same amendment as Manitoba.

The definition of "learner" in the British Columbia, Newfoundland, Nova Scotia and Ontario Acts refers to training or probationary work "specified or stipulated by the employer", and in the New Brunswick Act "supplied or stipulated by the employer". In the other four provinces, as a result of amendment or otherwise, a learner is eligible for compensation regardless of whether or not the specific act in which he is engaged at the time of the accident is work "specified or stipulated by the employer" as part of his duties.

The Alberta and Prince Edward Island Acts provide that, in the event of a learner suffering injury in such circumstances, compensation is to be based on the wages paid to beginners in the trade or business in which he is a learner. The Nova Scotia Act states that the average earnings of a learner are to be determined at an amount that the Board deems fair.

APPRENTICES AND TRAINEES

Persons employed under a formal contract of apprenticeship in an industry within the scope of the Act are protected in all provinces. The Manitoba Act was amended in 1961 to extend coverage to apprentices in an industry under Part I while attending prescribed school classes. The Alberta Act was similarly amended in 1965 to state that, where a workman is required to attend classes as a condition of his employment, the classes are deemed to be part of the employment for purposes of the Act. In the other provinces also, apprentices are covered while attending technical schools. The apprentice is either deemed to be the employee of the employer to whom he is apprenticed while attending school and therefore covered, or he is considered an employee of the provincial government, and compensation is charged to the provincial government's account.

PERSONS ENGAGED IN RESCUE WORK

In Alberta, British Columbia and Nova Scotia, a person is considered a "workman" for the purposes of the Act while in training for mine rescue work (in British Columbia and Nova Scotia, under the direction or with the approval of the employer).

A person is a "workman" within the meaning of the Alberta and British Columbia Acts while actually engaged, with the knowledge and consent of the employer, in attempting to save life or property after a mine explosion or accident. In British Columbia, a workman engaged in mine rescue work is covered, irrespective of whether he is entitled to receive wages or is a volunteer.

"Workman" under the Nova Scotia and Prince Edward Island Acts includes a person actually engaged in rescuing or protecting life or property endangered by an explosion, fire or accident in any industry in which such person is employed. An accident occurring in such circumstances is deemed to arise out of and in the course of the person's employment.

The New Brunswick Act states that "mining" includes mine rescue work. Thus, workmen who suffer injury while doing rescue work in a mine are covered in the same way as workers in the mining industry.

In Alberta and Newfoundland, the compensation payable for injury sustained by workmen while doing rescue work to save human life in case of a mine explosion or accident or in case of a fire or other catastrophe in any other industry is computed on 100 per cent of average earnings, in lieu of the 75 per cent otherwise provided in the Act.

WORK OUTSIDE THE SCOPE OF THE WORKMAN'S REGULAR EMPLOYMENT

The Alberta and Manitoba Acts provide protection for a workman who is injured while engaged in work which he is required to do by his employer but which is outside the scope of the Act.

In Alberta, if an employer engaged in an industry to which the Act applies (or any person authorized to act on his behalf) directs a workman employed by him in the industry to do other work which is not covered by the Act (for example, work in the industry of farming or ranching), and the workman is injured in the course of the other work, the work is to be deemed to be in the industry of the employer to which the Act applies. The employer is required in such circumstances to pay an additional assessment in respect of the work equal to the full cost of the claim, up to a maximum of \$50.

The Manitoba provision states that, if a workman employed in an industry covered by the Act is required by his employer or supervisor to do work outside the scope of his employment and for the personal benefit of the employer or supervisor, and suffers an injury while doing such work, he is entitled to compensation from the Accident Fund as if the accident had arisen out of and in the course of his regular employment.

⁴In re: The Workmen's Compensation Act, Canadian Pacific Railway Company and Order A-43151 of the Workmen's Compensation Board (1950) 1 W.W.R. 673.

CASUAL WORKERS

Persons whose employment is of a casual nature and who are employed otherwise than for the purposes of their employer's trade or business are expressly excluded from compensation coverage in all provinces. There is provision, however, in Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan for these workers to be brought within the scope of the Act on the application of the employer.

In Manitoba, Ontario and Quebec, there is no provision for optional protection of casual workers.

HOMEWORKERS

Homeworkers, that is, persons to whom work is given out to be done at home (referred to in the Acts as "outworkers"), are exempted in all provinces. As with casual workers, homeworkers may be brought under the Act on the employer's application, except in Alberta, Manitoba, Ontario and Quebec.

DOMESTIC SERVANTS

Domestic servants are outside the scope of the workmen's compensation scheme. In six provinces they are expressly excluded from coverage but provision is made for their inclusion on the same terms as for farm workers, through elective coverage at the option of the employer.

Domestic servants are not mentioned in the Alberta and British Columbia Acts but in these provinces, too, they may be covered on the application of the employer in the same way as other workers.

In Ontario and Quebec, domestic servants are explicitly exempted from the Act and there is no provision for bringing them within its scope by voluntary application.

INDEPENDENT OPERATORS

In British Columbia and Ontario, "independent operators", that is, persons who are engaged in an industry under the Act but who do not employ workmen, are permitted voluntary coverage. In the words of the Acts, an independent operator is a person "not being an employer or a workman but performing work of a nature that, if he were a workman, would be within this Part" (Part I). The British Columbia provision was enacted primarily to cover commercial fishermen. Under this provision, coverage was extended in 1966 to 2,084 independent fishermen and to 843 other persons classified as independent operators.

The conditions on which coverage may be granted have been set out in regulations in Ontario. An applicant for independent operator coverage must state, on a prescribed form, the yearly value of his earnings on which coverage is to be based, which may not be less than \$2,500 or more than \$6,000. Application must be made annually, if continued protection is desired.

In Newfoundland, an independent operator in the fishing industry who is remunerated wholly or mainly by

shares in the profits or earnings of the vessel may be brought under the Act on application.

A person who is self-employed pays the cost of his compensation coverage himself.

EMPLOYERS

The Acts are intended to protect workmen employed by others, and in all provinces an employer in an industry within the scope of the Act is not personally protected unless he elects to apply for coverage. Upon his application being approved by the Board, the employer is deemed to be a workman in the industry for the period during which coverage is to be provided. Coverage for a specified period during the year may be obtained (dates must be given) and assessment is charged only for the period covered.

The employer is entitled to compensation only if he is carried on the payroll assessed by the Board at an amount not exceeding the ceiling on annual earnings set by the Act concerned, it is stated in the payroll return furnished to the Board that he wishes to be included as an employee, and his earnings are shown on the payroll statement. Some of the Acts set the minimum amount of coverage that may be requested. Compensation is payable on the amount of earnings shown in the payroll and statement.

The Alberta Act states that in an industry to which the Act applies and in which assessments are based on production (for example, the lumbering industry) persons who work in the operation of the industry in partnership are deemed to be workmen of the partnership, and the partnership is deemed to be an employer within the meaning of the Act.

EXECUTIVE OFFICERS OR DIRECTORS OF CORPORATIONS

In six provinces — Manitoba, Newfoundland, Ontario, Prince Edward Island, Quebec and Saskatchewan — directors or executive officers of a corporation or limited company in an industry under the Act are excluded, but may, if they so desire, obtain personal coverage on application on the same terms as for an employer. That is, the executive officer or director must be designated by name in the payroll report submitted to the Board and a request must be made for coverage at an amount of earnings not exceeding the annual wage ceiling provided in the Act.

For purposes of the sections providing for optional coverage, "employer" is defined under the Saskatchewan Act to include partner, president, vice-president, director, secretary-treasurer and any other executive officer of a company. The term "executive officer", as used in the Ontario Act, covers the director, president, vice-president, secretary and treasurer of the company, that is, officers of the corporation as such, but not superintendents or managers of a factory or plant who are not corporation officers.

The regulations under the Newfoundland Act provide that an executive officer or director of a corporation in an industry under Part I who is also an employee

of the corporation may be brought within the coverage of the Act on the application of the corporative employer. When he is so admitted, the remuneration he receives as a director and his earnings for his other services are to be regarded as his total remuneration.

The Alberta Act provides that every person rendering service to a corporation under a contract of service, whether or not a member, officer or executive of the corporation and whether or not the corporation is under legal obligation to pay such person any remuneration, is to be deemed a workman of the corporation and must be included as such on the company's payroll. Where the person is not being paid any wages or salary, or is being paid token remuneration, the Board must fix a reasonable sum as representing his wages or salary, not exceeding the annual ceiling of \$5,600, and add the sum so fixed to the payroll of the corporation.

In British Columbia, in an incorporated company all shareholders or officers who are actively engaged in the business are regarded as employees of the company, and their position under the Act is the same as that of employees who have no financial interest in its operation.

In Nova Scotia, a director or officer of an incorporated company who performs no services other than to attend directors' meetings is excluded from Part I. Where a director or officer holds the position of president or vice-president or any other office and receives no remuneration other than for attending directors' meetings, he is also excluded.

Where a director of an incorporated company is also an employee of the company, his work as a director is covered by Part I, and any pay he receives in such capacity is to be considered part of the wages he receives from the company.

There is no specific mention in the New Brunswick Act of coverage of executive officers or directors of a corporation. If they are engaged in the operation of the business, they may be covered on application.

MEMBERS OF THE EMPLOYER'S FAMILY

Seven of the provincial Acts specifically exclude members of the employer's family who are employed by him and reside with him but permit the employer to make application to have them brought within the scope of the Act.

In British Columbia, the wife or husband of the employer and members of the employer's family who are under the age of 21 years and who reside with him may be covered only on application.

In New Brunswick, the exclusion applies to young family workers under 16, and in Prince Edward Island it applies to those under 17. In Alberta, Manitoba, Nova Scotia and Saskatchewan, the employer must make application, if coverage is desired, for any members of his family employed by him and living in his house, regardless of age.

The Alberta Act spells out the procedure to be followed by the employer to obtain coverage for members of his family who are employed by him and live as mem-

bers of his household. The application must contain the names of all such members, together with the estimated amount of their wages for the current year or balance of the year, or a stated sum in lieu of wages, in either case not less than \$2,500 and not more than \$5,600 in respect of each individual member. Coverage is granted on a yearly basis. Compensation is based on the weekly equivalent of the annual wage rate set out in the employer's application.

A member of the employer's family who is employed by him and who resides elsewhere than with the employer is in the same position as workmen who bear no relationship to the employer. In British Columbia, New Brunswick and Prince Edward Island, members of the employer's family over the age specified are automatically covered if in receipt of a stated wage and included in the employer's payroll statement to the Board.

The Newfoundland, Ontario and Quebec Acts do not contain any specific provision with respect to members of the employer's family.

In these provinces, if members of the employer's family are paid employees whose names appear on the employer's payroll statement, they are entitled to benefits as workmen under the Act.

In Ontario, the wife or husband of a sole owner or partner is deemed to be a partner and may be covered only on request, in the same manner as the employer.

COMPENSATION TO BLIND WORKMEN

Eight provinces — Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan — have enacted Blind Workmen's Compensation Acts, and there are special provisions in the Quebec Workmen's Compensation Act (Sections 116-118) dealing with compensation for blind workmen.

The laws were passed to increase the employment opportunities of blind workers who might otherwise be refused employment on the ground that their accident rates would be high.

All these statutes make provision for payment from public funds of the costs, or the greater part of the costs, of compensation for an accident occurring to a blind workman.

Reimbursement by the province is provided for under two conditions: that the total amount of the compensation payable exceeds \$50, and that at the time of the accident the workman was employed with the approval of an institute for the blind (for example, the Canadian National Institute for the Blind) recognized by the government of the province for that purpose. Under these conditions, in Ontario the full amount of the compensation, and in the other eight provinces the amount in excess of \$50, is paid to the Board, by way of reimbursement to the Accident Fund, from the Consolidated Revenue Fund of the province. Where, in Ontario and Quebec, the employer is individually liable for the payment of compensation, repayment is made to the employer.

CHAPTER VIII

Workmen's Compensation Boards

Each Workmen's Compensation Act is administered by a board called the Workmen's Compensation Board, or, in Quebec, the Workmen's Compensation Commission. Each Board has three members except the Quebec Commission which has five.

Each Workmen's Compensation Board is a body corporate. Its members are appointed by the Lieutenant-Governor in Council (the provincial Government) and they hold office during pleasure, subject to fixed retirement ages or terms of office in certain provinces. In the four western provinces the Lieutenant-Governor in Council designates the chairman; in the remaining provinces both a chairman and a vice-chairman (in Quebec, president and vice-president) are named by the Lieutenant-Governor in Council. In Quebec, the president must be chosen from among the district judges. Board members, other than the chairman or vice-chairman, are usually referred to as commissioners. Salaries of Board members are fixed by the Lieutenant-Governor in Council and are paid from the Accident Fund.

The Alberta, British Columbia, Newfoundland, Ontario and Quebec Acts state that all Board members must give their full time to their duties under the Act and engage in no other employment. The Saskatchewan Act requires the chairman only to devote his entire time to the work of the Board. In fact, except in Prince Edward Island, where the two commissioners serve on a part-time basis, all the Boards are full-time bodies.

The chairman of the Saskatchewan Board is appointed for a 10-year term, and the two commissioners of the Manitoba Board for a five-year term. In each of these cases members are eligible for reappointment. With these exceptions, Board members are appointed for an indefinite term.

In Manitoba, Nova Scotia, Ontario and Prince Edward Island, Board members must retire on reaching the age of 75; in Alberta and British Columbia, they must retire at 70; in Newfoundland, members must cease to hold office at 65. In all these provinces, except Alberta, it is stipulated that retirement ages must be observed unless the Lieutenant-Governor in Council directs otherwise.

It is common practice for one Board member to be drawn from management and another from organized labour. Once named to the Board, however, they do not represent the groups with which they were formerly associated. In a number of the provinces a member of the legal profession serves as chairman of the Board. In two provinces one member of the Board is a medical doctor.

Speaking of the role of the Ontario Board, Mr. Justice Roach said in his 1950 Royal Commission Report (p. 108):

I look upon the members of the Board as each occupying a position in very many respects comparable to the position occupied by a judge in the

courts of the Province. Their decisions affect most intimately and vitally the lives of many of our citizens. To suggest that any member of the Board represents any group or interest is to infer that he is not unbiased and that the Board is a partisan Board. He may have been appointed from the ranks of industry or labour but once he is appointed he owes allegiance to no group.... The value of the contribution which each is able to give out of the wealth of his experience and training to the joint deliberations and decisions of the Board is reflected in the approval given by those who appeared before me to the manner in which the Board had discharged the onerous duties which rest upon it.

Apart from the requirement of reporting to the Legislature annually, the Boards are virtually free from government control. Special legislative committees, reporting on the operation of the Alberta Act in 1955 and 1960, expressed opposition to the Government making any direct contribution towards the costs of administration, stating that "the Board should be, as it now is, free from any control of the Government."

Royal Commissioner Mr. Justice Tysoe said of the British Columbia Board (p. 93):

The Board is possessed of extremely wide powers and, so long as it acts within its jurisdiction and in good faith, it is subject to no control other than that control which always remains vested in the Provincial Legislature. . . It is an administrative body with all the rights and protection commonly given by Statute to such a body.

In all provinces the Minister of Labour deals with workmen's compensation matters in the Legislature. Bills to amend the Workmen's Compensation Act are introduced and piloted through the Legislature by the Minister of Labour. In Manitoba, Newfoundland, Nova Scotia and Prince Edward Island, the Board is required to submit its annual report to the Minister of Labour, giving information as to its financial position and its operations during the year. The New Brunswick Board is required to report to the Minister of Finance and Industry, and the Ontario Board to the Provincial Secretary. The Alberta, British Columbia, Quebec and Saskatchewan Acts merely state that the report is to be made to the Lieutenant-Governor in Council. In Saskatchewan, the report is submitted to the Lieutenant-Governor by the Minister of Labour. Except in Alberta and Ontario, the report is tabled in the Legislature by the Minister of Labour.

The annual report is based upon the accounts of the Board, audited by the Provincial Auditor or an auditor appointed by the Lieutenant-Governor in Council, as the case may be.

In most provinces members of the Board's staff are appointed by and hold office at the pleasure of the Board. In Newfoundland, the secretary, chief medical officer and assistant medical officers of the Board must be appointed by the Lieutenant-Governor in Council; other members of the staff are appointed by the Board. In Quebec, the Lieutenant-Governor in Council may

appoint the secretary of the Commission. The Secretary and other employees of the Commission must be appointed in accordance with the Civil Service Act. Most of the Acts state that salaries of Board employees are to be fixed by the Board, subject to the approval of the Lieutenant-Governor in Council. In all provinces salaries are paid from the Accident Fund.

The head office of the Board is in the capital city of the province concerned, except in British Columbia and New Brunswick, where it is located in Vancouver and Saint John, respectively. Where it deems it expedient, the Board may hold sittings elsewhere than at its head office. Several Boards have established regional or district offices — the British Columbia Board at Victoria, Nelson, Prince George and Vernon, and the Ontario Board at the Lakehead, North Bay, Ottawa, Sudbury, Windsor and Kitchener-Waterloo. The Quebec Board has a Montreal office as well as its head office in Quebec City; the Nova Scotia Board has a branch office in Sydney, with a medical doctor on the staff, and the Saskatchewan Board has a branch office in Saskatoon. In Alberta, there are Board offices at Lethbridge, Calgary, Red Deer and Grande Prairie.

The presence of two members of the Board (three in Quebec) is necessary to constitute a quorum. The Quebec Act states that decisions are to be made by majority vote, with the president (chairman) having a casting vote where there is equality of voting. The opinion of the president is to prevail in any question which he deems to be a question of law.

The Boards have exclusive jurisdiction in regard to all matters within the scope of the Act, and, except as indicated below, their actions and decisions are final and not subject to appeal in the courts.

The relevant provision of each Act is worded along the following lines:

The board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Board; and the action or decision of the board thereon shall be final and conclusive and shall not be open to question or review in any court, and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court, or be removable by certiorari or otherwise into any court. (Manitoba Act, Section 44(1)).

The exception to the above is that the Acts of Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island allow an appeal to the Supreme Court of the province (in New Brunswick — the Supreme Court, Appeal Division). The right of appeal varies with the terms of the Act concerned. In New Brunswick, Nova Scotia and Prince Edward Island, the right of appeal is limited to questions of law or of the Board's jurisdiction. Further, in Nova Scotia and Prince Edward Island, an appeal may be taken to the Court only with the permission of a judge of the Court, upon petition being made within 15 days from the date of the decision appealed from. The New Brunswick Act grants a direct right of appeal, but within 10 days of being provided by the Board with a statement of the facts and the grounds for

the Board's decision, constituting the record on the appeal, the appellant must apply on summons to a judge of the Court to determine and order that such record discloses a question of law or jurisdiction.

In Newfoundland, an appeal to the Court, provided for in 1967, is permitted on questions of the Board's jurisdiction, of law, or of mixed law and fact. An appeal must be made within 30 days from the date of the decision appealed from. Proceedings are to be taken as if the Court were conducting a hearing *de novo*, unless the Court directs otherwise.

The Board in each of these provinces may, of its own motion, submit a stated case to the Court for an opinion upon any question of law (in Newfoundland and New Brunswick, upon any question of law or jurisdiction). The Newfoundland Board may refer also a stated case to the Court upon the application of any party or at the request of the Lieutenant-Governor in Council.

There has been a limited number of appeals in these provinces under the provisions outlined above.

Giving emphasis to the fact that only questions of law and jurisdiction are subject to appeal, the Nova Scotia and Prince Edward Island Acts list a number of questions (matters which in other Acts are specifically declared to be within the exclusive jurisdiction of the Board) and state that these are to be deemed questions of fact. These questions are:

- (a) the question whether an injury has arisen out of or in the course of an employment within the scope of this Part;
- (b) the existence and degree of disability by reason of any injury;
- (c) the permanence of disability by reason of any injury;
- (d) the degree of diminution of earning capacity by reason of any injury;
- (e) the amount of average earnings;
- (f) the existence of the relationship of a member of the family;
- (g) the existence of dependency;
- (h) the character, for the purpose of this Part, of any employment, establishment or department and the class to which such employment, establishment or department should be assigned;
- (i) whether or not any employee in any industry within the scope of this Part is himself within the scope of this Part and entitled to compensation thereunder;
- (j) the question whether a disease other than a disease mentioned in the Schedule is an industrial disease under this Act. (Nova Scotia Act, Section 23)

In making the Board the final authority, the Acts follow the guiding principles of Chief Justice Meredith, which were "to get rid of the nuisance of litigation" in compensation cases and to "have swift justice meted out to the great body of the men" injured at work.

The Acts give the Board full authority to reconsider any question that it has previously dealt with and to rescind, alter or amend any of its decisions or orders. The Board has continuing jurisdiction over all cases, enabling it to modify any decision on the basis of changed conditions or new evidence. This was considered a necessary safeguard against arbitrary action or error on the part of the Board, in view of the prohibition of any court review of its decisions.

Unlike the courts, the Board is not required to follow strict legal precedent, the intent being that each case shall be decided on its own merits. The Board is directed to render its decisions upon the real merits and justice of the case. The Alberta and New Brunswick Acts specifically state that no ruling of the Board is binding upon it as a precedent for any other decision. The Quebec Commission is required to state the grounds on which its decisions are based.

The Board deals directly with the workman or dependants and it is not necessary for him or them to retain counsel.

The Board has powers similar to those of a court for compelling witnesses to appear, for examining them under oath, and for requiring the production of documents.

In general, it can be said that the policy of the Boards is to give as liberal an interpretation of the terms of the Act as possible.

The Newfoundland, Nova Scotia and Prince Edward Island Acts state specifically that, in cases where there is doubt as to the allowance of a claim, the injured workman is to be given the benefit of any reasonable doubt.

Section 52 of the Nova Scotia Act provides as follows:

Notwithstanding anything in this Act, on any application for compensation an applicant shall be entitled to the benefit of the doubt, which shall mean that it shall not be necessary for the applicant to adduce conclusive proof of his right to the compensation applied for, but that the Board shall be entitled to draw and shall draw from all the circumstances of the case, the evidence and medical opinions, all reasonable inferences in favour of the applicant.

The Board's primary responsibility is the adjudication of claims for compensation. For this purpose it requires the workman, employer and physician to submit accident reports and it must obtain the necessary evidence and expert opinion to determine whether an accident or industrial disease is work-caused. If a claim is allowed, the Board is responsible for determination of the amount and payment of compensation to the workman or his dependants.

Each Board keeps a register of all employers covered by the Act.

The Boards are empowered to collect sufficient funds from employers to maintain the Accident Fund so that it can meet all claims as they arise. They have authority to set assessment rates appropriate for each class of industry, to audit employers' payroll records, to compute and collect assessments, to invest the proceeds for the provision of pensions to disabled workmen and dependants and to disburse funds, as required, for the various phases of workmen's compensation.

The Tysoe Report (p. 360) pointed out that the Board's responsibility is two-fold. As trustee of industry's funds, it is responsible to those from whom it collects funds. It is responsible also to workmen and their dependants to whom compensation and other benefits are a right under the Act.

For the purpose of assessment, the industries covered by each Act are divided into classes, according to accident hazard. Classes are usually divided into subclasses, with varying assessment rates. The original classifications of industries were included in the Act in most provinces but in a few provinces the division of industry into classes and subclasses was made the responsibility of the Board. As they may decide from time to time and subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Boards may add new classes, subdivide or rearrange classes or add industries to or withdraw industries from any class.

Broad authority is vested in the Board in the administration of medical aid and rehabilitation services. The Boards are thus enabled to carry on an integrated medical and rehabilitation program. The rehabilitation program carried on includes vocational rehabilitation and, when required, assistance in locating employment. A number of the Boards maintain their own Rehabilitation Centres.

The Boards also have jurisdiction with respect to first aid, and lay down specific requirements for the provision of first aid equipment and services by employers, the requirements varying with the number of workmen employed.

In all provinces the Board is concerned with accident prevention, and in some it is the provincial agency directly responsible for the administration of the main safety legislation of the province. In British Columbia, the comprehensive Accident Prevention Regulations made and enforced by the Board constitute the province's safety code. The Manitoba Board is responsible for the administration and enforcement of the Employment Safety Act, an Act covering all workers in the province except farm workers, domestic servants and mining employees. The Alberta, Newfoundland and Saskatchewan Boards have made and enforce safety regulations.

The Boards also have additional duties to perform, as agents of the federal Government, in the adjudication of claims of federal government employees under the Government Employees Compensation Act (p. 47).

The Boards are given power to make regulations, subject to the approval of the Lieutenant-Governor in Council, for the carrying out of the provisions of the Act.

The Boards are active in the public relations field, maintaining an extensive public relations program both from the point of view of safety (in some provinces), and for the purpose of making employers and workmen aware of their rights and obligations under the legislation. This program includes addresses by members and officers of the Board, seminars for management and labour groups, conferences, liaison with the treatment professions, films, informative booklets and pamphlets and

the use of various news media, such as monthly news bulletins, radio and TV releases.

The low administrative cost is one of the advantages of the administration by the Board of a state fund, entirely exclusive of any competition from private insurance companies. In Ontario, in the period between 1960 and 1966 costs of administration ranged between 6.5 and 7.8 per cent of total costs; in Quebec, the corresponding percentage for 1966 was 7.05 per cent. As a result of the low ratio of administrative costs to total costs in all provinces, the bulk of the employers' contributions goes towards the benefit of injured workmen. This is indicated by the distribution of total costs in Newfoundland in 1966, set out in the Board's Annual

Report as follows:

For injured workmen	— 90.9%
For accident prevention	— 1.0%
Administration	— 8.1%

Further, since the Board has no profit motivation, employers benefit by a reduction of their assessment rates if total income exceeds total costs.

To bring together the officers charged with the administration of workmen's compensation laws, the Association of Workmen's Compensation Boards of Canada was organized in 1919. This association, which meets annually, has been an important factor in bringing about uniformity in workmen's compensation laws and administration in Canada.

Of wider scope, and facilitating the exchange of information on all aspects of workmen's compensation on an international basis, is the International Association of Industrial Accident Boards and Commissions, embracing all the Canadian provinces, all 50 states of the United States, Puerto Rico, the Philippines, Australia and New Zealand. Meeting annually, the I.A.I.A.B.C. has sought to improve workmen's compensation laws and administration and has laid down standards of a model law for adoption by its member jurisdictions.

CHAPTER IX

REPORTING OF ACCIDENTS

In order to make a proper adjudication of whether a workman is or is not eligible for compensation, the Board must have a complete and detailed picture of what occurred to cause the injury. To this end, the employer, workman and attending doctor are required to report to the Board. Reports must be submitted on a special form available from the Board and usually identifiable by number — in British Columbia and Ontario, for example, Form 6 (the workman's injury report and application for compensation), Form 7 (the employer's report) and Form 8 (the physician's first report). Prompt submission of reports is required.

All the Acts require the injured workman to notify his employer of his accident "as soon as practicable" after it occurs, but contain a saving clause to the effect that, under certain conditions, failure to give such notice does not bar payment of compensation. In Manitoba, notice must be given "as soon as practicable, but in any case not later than 30 days after the happening of the accident". Further, under all the Acts, except those of Alberta, British Columbia and Manitoba, notice must be given before the workman has voluntarily left the employment in which he was injured. The employer must be notified at once to enable him to investigate the accident and to send his report to the Board.

Failure to give notice, or a defect or inaccuracy in a notice, may be excused by the Board on one of the following grounds: (1) for some sufficient reason notice could not have been given; (2) the employer or his superintendent or agent in charge of the work had knowledge of the injury; (3) in the Board's opinion, the employer's position was not prejudiced; or (4) the Board is of the opinion that the claim is a just one and ought to be allowed.

The notification to the employer must give the workman's name and address and, under most Acts, it is sufficient if it states in ordinary language the cause of the injury and where the accident happened. In some provinces workmen are required to supply all details of the accident and names of witnesses.

The British Columbia and Manitoba laws state that the notice must be signed by the injured workman or some person on his behalf, and, in case of an industrial disease, the employer to whom notice is to be given is the employer who last employed the workman in the employment which caused the disease.

The injured workman is also required to fill in, sign and return his Report of Accident to the Board. The report usually contains questions as to age, marital status, date and hour of accident and lay-off, accident explanation, witnesses, doctors' names and whether claimant is a partner or owner of the business.

The employer is required to report to the Board any accident involving time-loss compensation or medical aid. In Alberta he must report within 24 hours after the accident comes to his knowledge or notice, in Quebec

within two days, and in all other provinces within three days. Without the employer's report the Board has no confirmation that the injury occurred at work.

In British Columbia and Ontario, the employer's report form has been designed to allow the employer to use it to report all cases. One part is completed and signed in every case where a workman requires medical aid but where no time loss is involved. The second part is completed where compensable lost time is involved. In British Columbia, compensation is payable for lost time if the workman is not able to complete his shift on the day of the accident and is disabled for an additional three working days. In Ontario, compensation is payable where the workman is prevented from earning full wages for more than two calendar days.

In Alberta, the employer is required to give a copy of his accident report to the workman. In Alberta and Manitoba, the employer is required also to notify the Board within 24 hours after he learns that the injured workman has returned to work or is able to return to work.

The Quebec Act states that the notice must be drawn up in the mother tongue of the injured workman if that is English or French, and in other cases in whichever of these two languages the workman chooses. The notice must not be signed by the workman until all the blanks have been filled in, and the employer is required to give him a completed copy.

There are teeth in the legislation to ensure that accidents are reported to the Board, and in three provinces failure to do so may make the employer responsible for the entire cost of an accident claim.

For failure to report accidents or to furnish particulars of an accident or claim, the Alberta and Nova Scotia Acts permit the Board to impose a penalty on the employer (\$10 a day, but not exceeding a total of \$50, in Alberta; a sum, not exceeding \$50, to be determined by the Board, in Nova Scotia). The Alberta Board has further authority, if information requested is not supplied within 30 days, to make a special investigation of the circumstances surrounding the injury and to charge the costs to the employer.

In seven of the other provinces — British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island, Quebec and Saskatchewan — the Act makes failure to submit accident reports, as required (in some provinces, unless excused by the Board on the ground that the report for some sufficient reason could not have been made) an offence punishable by the courts, on summary conviction. In most cases the Act provides for a maximum fine of \$50, but in British Columbia and Manitoba a fine of up to \$500 may be imposed.

In addition, in Ontario, Quebec and Saskatchewan, the Board has authority to charge the costs of compensation and medical aid in respect of the accident or claim to the employer involved.

The doctor's first report, advising the Board that the accident has resulted in disablement and indicating the nature and extent of the disability, is required in all cases where time-loss compensation is involved.

In Quebec, first reports must be made within six days following an accident. Later reports are to be furnished as required.

Doctors and hospital officials are obliged to furnish reports concerning a workman's condition as required by the Board.

In Alberta, for example, the physician attending an injured workman must report to the Board within two days after his first attendance on the workman, twice monthly while he continues to treat him, within three days after the workman is, in his opinion, ready to resume work and at such other times as may be required. In Manitoba, also, a doctor must report within three days after the workman, in his opinion, is ready to resume work.

TIME LIMITS FOR FILING CLAIMS

All the provincial Acts set a time limit for the filing of claims for compensation but, as with notice of an accident, the Board is given discretion to allow a claim, despite failure to comply with the statutory time limit, where, in its opinion, the employer has not been prejudiced or the claim is a just one and ought to be allowed.

Subject to provisions enabling the Board to exercise its discretion in individual cases, the Acts require claims to be filed within the following time limits:

Newfoundland Nova Scotia Ontario Prince Edward Island Quebec Saskatchewan	{ within 6 months from the happening of the ac- cident or within 6 months from the date of death of the workman
New Brunswick	— within one year after ac- cident or 6 months after death
Alberta British Columbia Manitoba	— within one year after ac- cident or death

The Manitoba Board was given authority in 1959 to extend any time limit set by the Act or regulations, where, in its opinion, injustice would result unless an extension of time was granted. This authority enables the Board to extend the one-year period set for the filing of claims.

The Alberta and British Columbia Acts permit the Board to exercise its discretion, provided claims are filed within a three-year period following the date of the accident.

The Alberta Act states that a claim must be made by the workman within one year of the date of the accident. The Board is empowered, however, to accept claims filed within three years of the date of the accident if the workman notified his employer of its occurrence as soon as practicable, and the claim is a just one and ought to be allowed.

Where death occurs, and the workman had not made a claim to the Board, compensation is not payable unless death takes place within one year after the accident, and a dependant makes a claim within one year after the workman's death. The Board is, however, permitted to pay compensation, even though no claim has been made, in a case of death occurring within three years following the accident, if the accident was reported as soon as practicable and the claim is a just one and ought to be allowed.

When a workman dies after making a claim, there is no time limit within which a dependant must apply for compensation.

British Columbia's normal time limit is one year, but if it is the Board's opinion that the claim is a just one and ought to be allowed, it may be accepted. However, it must be filed within three years from the date of the accident or one year from the date of commencement of the first period of disability from an industrial disease, or by a dependant within three years after the workman's death.

REVIEW OF CLAIMS

Since in most provinces there is no appeal to the courts from Board decisions (for exceptions, see p. 57), the Boards freely review their decisions and in some provinces a review or appeal procedure has been established within the Board.¹

In British Columbia, a workman whose claim has been rejected by the Claims Department of the Board may appeal the decision to a Board of Review. The Board of Review consists of three senior personnel of the Board—the chief claims officer, who acts as chairman, the chief medical officer and the chief solicitor. The workman or his representative has the right to appear in person before the Board of Review, and the Board of Review may request a workman to attend.

The Board of Review does not conduct a hearing in the accepted sense but reviews the claim, together with any additional information that the claimant may bring forward. As it sees fit, it may require further medical or other information. Should the Board of Review uphold the previous decision, the workman has the right to a further appeal to the Workmen's Compensation Board itself. A claim may be referred also to the Board by the Board of Review.

The workman is required to file notice of appeal to the Workmen's Compensation Board, giving the reason why the original decision is thought to be in error and a statement of any further information provided. The Board may institute further inquiries and obtain opinions from its advisers and others before making a decision.

¹ Special procedures are also provided in most of the Acts to resolve a purely medical dispute (see p. 27).

In Ontario, three separate and independent levels of appeal are open to a workman whose claim has been disallowed — the Review Committee, the Appeal Tribunal and the Board itself. No person who has been a party to a decision may review that decision. In order to ensure impartiality in deciding a claim on appeal, members of the Review Committee or Appeal Tribunal may not become involved in claims at other levels of decision-making. In any appeal an attempt is made to ascertain the true facts and to render a decision according to the merits and justice of the case.

If a claim is rejected by the Claims Department, the workman is notified by letter of the reasons for its rejection and informed of his right to appeal to the Review Committee.

The Review Committee, which consists of nine senior officials of the Board, does not hold hearings, but considers all the evidence before it, and may procure further pertinent information. The workman is advised in writing of the results of his appeal, and, in the event of an adverse decision, of the reasons for the decision and of his right to appeal to the Appeal Tribunal. If the workman intends to appeal to the Appeal Tribunal, the Review Committee will provide him, on request, with a summary of the evidence on which its decision was based.

The Appeal Tribunal, consisting of a senior claims officer as chairman, a doctor and a lawyer, holds a hearing in every instance. Hearings may be held anywhere in the province, depending on the convenience of the appellant. The procedure at hearings is informal. The appellant may conduct his own case or may be represented by his union representative, a solicitor or other responsible person. He may testify in his own behalf and may call witnesses. Cross-examination of witnesses is not permitted but all parties have the right to bring forward any evidence that has a bearing on the issue. All evidence is taken down in writing, to be available in the event of a further appeal. The appellant is notified in writing of the decision and the reasons on which it is based.

The third level of appeal is the Workmen's Compensation Board. The Board hears appeals at its offices in Toronto. Hearings before the Board are *de novo*. The procedure is informal and cross-examination is not permitted. The appellant may be represented if he wishes and may call witnesses. A transcript of the Appeal Tribunal hearings is available to him on request. The Board may order an inquiry or refer the matter to a medical referee.

The Board's decision is communicated to the appellant by letter and the reasons for the decision are given. The decision at this level is final but, since no claim is ever closed, the Board at any time will reconsider any matter with which it has dealt, on the submission of new evidence, on the aggravation of an injury or for some other good reason.

COMPENSATION COUNSELLOR

In four provinces the services of an officer, known as a Compensation Counsellor (British Columbia), Assistance Officer (Manitoba), Workmen's Counsellor (Nova Scotia) and Workmen's Adviser (Ontario), are available on request to an injured workman to assist him in preparing and presenting a claim for compensation.

In British Columbia and Manitoba, the Compensation Counsellor is an official of the provincial Department of Labour, and is paid a salary by that Department. The Manitoba Act states further that he must carry out his duties "in accordance with the general directions of the Minister of Labour." In Nova Scotia, the Workmen's Counsellor is appointed by the Lieutenant-Governor in Council on the recommendation of the Minister of Labour. In practice, this appointment is a part-time one and the official is neither an officer of the Board nor of the Department of Labour, his salary being paid from the Consolidated Revenue Fund of the province. In Ontario, the Workmen's Adviser is an officer of the Workmen's Compensation Board.

The Manitoba and Nova Scotia Acts permit the Counsellor to perform other duties as may be prescribed by the Lieutenant-Governor in Council.

The function of the Counsellor is to advise and assist workmen who are dissatisfied with the disposition of their claims and wish to have them reviewed. When a workman wishes to have a previously finalized claim reopened, the Counsellor advises him as to the proper procedures to be followed.

The Counsellor, who has access to the files and records of the Board, reviews all aspects of the case, and, if possible, obtains additional evidence to strengthen the claim. He advises the workman as to what appeal procedures may be open to him. Where a formal hearing is held, the Counsellor may prepare a brief for presentation and in some provinces may act as the claimant's advocate. In Ontario, the Adviser may not appear at an appeal hearing to represent the workman.

CHAPTER X

Individual Liability

In certain areas of employment in Canada, the law makes the employer individually liable for the payment of compensation for work injuries. These include public authorities and certain large corporations in Ontario and Quebec; the fishing, seal fishing and dredging industries in Nova Scotia; shipping covered by the federal Merchant Seamen Compensation Act, and employment under the Workmen's Compensation Ordinances of the Yukon and Northwest Territories.

A further type of individual liability is provided for in Part II of most provincial Acts. Part II sets out the liability of the employer for damages (not compensation) for his negligence or the negligence of his employees in personal injury cases arising in employment outside the workmen's compensation scheme. In such cases damages must be recovered by bringing an action in the courts. Under this Part, certain common law defences formerly available to the employer are superseded, to the benefit of the workman who is not entitled to compensation and whose only recourse is an action at law.

ONTARIO AND QUEBEC — INDUSTRIES IN SCHEDULE 2

When the Ontario and Quebec Acts were enacted, they put into effect a system of collective liability applying to most industries in the province but left public authorities (the provincial and municipal Governments) and certain large companies, chiefly public utilities, individually liable. This situation still obtains.¹

These industries, which are enumerated in Schedule 2 of the Acts, are permitted self-insurance instead of being required to contribute to the Accident Fund. The employer is individually liable to pay the total compensation and medical aid costs of an employment injury occurring to any of his employees, as well as a proportion of the annual administrative expenses of the Board. Adjudication of claims in Schedule 2 industries is the responsibility of the Board, just as in the collective liability schemes, and compensation and medical aid costs are paid through the Board. There is no difference in benefits in Schedule 1 and Schedule 2 industries.

¹In Chief Justice Meredith's view, these large industries and public employments were exceptional in character and the reasons for adopting the collective liability system had practically no application to them. Each was deemed strong enough financially to justify being treated as if it were a separate class under Schedule 1. Chief Justice Meredith stated that "the inclusion of railways in schedule 1 was opposed by the three principal steam railway companies. . . and I saw no reason why their wishes should not be met if by meeting them the act would not be rendered less beneficial to the employees and no injustice would be done to the employers in the industries included in the schedule".

Schedule 2 industries in Ontario include railways,² street railways (also car shops, machine shops and other works for the purposes of the railway), express companies operated in connection with a railway, telegraph companies, construction and operation of an inter-provincial or international bridge, municipal corporations, boards and commissions, and the Crown in right of the province (the provincial Government and any permanent board or commission appointed by it, including members of the staffs of certain courts.)

Schedule 2 of the Quebec Act makes the same classes of employers individually liable to pay compensation as listed in Schedule 2 of the Ontario Act, with the exception of telephone companies within federal jurisdiction. By regulation of the Workmen's Compensation Commission, the Bell Telephone Company of Canada, a company within the legislative authority of Parliament, was transferred from Schedule 2 to Schedule 1 in 1966. That is, it was brought within the collective liability system. The Quebec Hydro-Electric Commission, a permanent commission of the provincial Government, was also transferred to Schedule 1. The Workmen's Compensation Commission has ruled that, on request, any municipal or school corporation may be transferred from Schedule 2 to Schedule 1.

NOVA SCOTIA — FISHING AND DREDGING

In Nova Scotia, the fishing industry was removed from the collective liability system in 1928, following the loss of several fishing vessels, and was permitted to insure its own risks, on condition that the insurance gave the same benefits and protection as Part I. New provisions governing the industry were enacted as Part III of the Act. Dredging operations and the sealing industry are also covered by Part III.

Part III provides for the payment of compensation by the employer, who is required to insure with a reliable underwriter to the extent of his liability. Compensation in these industries does not include medical aid or the right to rehabilitation, but in other respects it is on the same scale as under Part I. Part III claims are adjudicated in the County Court. On the making of an award by the court, the owner or insurance carrier is required to deposit the capitalized value of the award with the Board, which administers the payments.

The McKinnon Commission found the benefits of Part III inadequate and the procedure cumbersome. However, it recommended its retention for a further period of five years. In 1965 a Commissioner was appointed to inquire into and make recommendations concerning Part III.

²While it is not specifically so stated in the laws of the provinces other than Ontario and Quebec, railways and the provincial Governments are self-insurers in all provinces.

FEDERAL MERCHANT SEAMEN COMPENSATION ACT

The federal Merchant Seamen Compensation Act makes the employer individually liable for the payment of compensation and requires him to carry insurance to cover his liability. This Act covers seamen who are not within the scope of a provincial Workmen's Compensation Act. The Act is described on page 52.

ORDINANCE OF THE YUKON AND NORTHWEST TERRITORIES

Ordinances of the Yukon and Northwest Territories provide for compensation benefits comparable to those provided for in the provincial Acts but are based on a system of private, rather than publicly administered, insurance.

An inquiry into the Territorial Ordinances, made in 1966 by a three-man Board³ named by the Commissioners of the Territories, recommended against any change in the present insurance coverage system, stating that conversion to a collective liability system was not administratively necessary or economically sound. The Board of Inquiry recommended uniform Ordinances, with uniform benefits for each Territory. New Ordinances were enacted in 1966 and 1967, putting into effect the changes recommended.

The employer, who is individually liable for the payment of compensation, is required to carry insurance in an approved insurance company to cover his liability or to make some other arrangement for the protection of his workmen that is acceptable to the Commissioner of the Territory. Any such exemption from the requirement to maintain insurance coverage may be allowed only on a yearly basis.

The Yukon-Northwest Territories workmen's compensation office in Edmonton is responsible for enforcement of the Ordinances. This includes referral of claims to the Referee.

The Alberta Workmen's Compensation Board acts as Referee under both Ordinances. Under the terms of the Ordinances, the Referee has exclusive jurisdiction over all matters and questions arising under the Ordinance and referred to him by the Commissioner. Actions and decisions of the Referee are final and conclusive and not subject to review in the courts.

Claims for permanent disability are referred by the Commissioner to the Referee. Claims for temporary disability are settled by the insurer. The insurer is required, in giving the workman written notice of decision, to inform him of his right of appeal to the Referee. If an employee is dissatisfied with the disposition of his claim, he may apply to the Commissioner to have his claim reviewed by the Referee.

The contract of insurance which an employer must enter into and maintain in force must be in an amount not less than \$250,000 for each workman and \$1,500,000 for two or more workmen injured or killed in any one accident.

The insurance company contracts to pay, on behalf of the insured employer, all compensation benefits, medical aid and other sums required to be paid under the Ordinance except the cost of transportation of an injured workman to the first place where his condition requires him to be sent, (which is payable by the employer), and the employer's assessment.

For administrative purposes the Ordinances provide for an annual assessment not exceeding one-half of one per cent of an employer's payroll or \$1, whichever is greater. The present assessment rate is one-fifth of one per cent of the employer's payroll. Insurers issuing insurance policies for the purposes of the Ordinance are by the regulations appointed as agents of the Commissioner for the purpose of collecting the administrative assessment from employers.

For the protection of workmen whose employers fail to provide insurance coverage, the Commissioner is authorized to enter into a contract of insurance, the premium for this coverage being paid from Territorial revenue. An employer who fails to provide the necessary insurance becomes liable not only to a penalty but also to payment of the compensation costs of an accident that occurs during the period of default.

The Ordinances, as revised in accordance with the recommendations of the Board of Inquiry, do not apply to enumerated industries, as do the provincial Workmen's Compensation Acts. Instead, they apply to all industries except farming and ranching, and to all workmen engaged in such industries, subject to certain exclusions. Wider coverage, therefore, is provided for. There is also less chance of confusion as to coverage since an employer and his workmen are clearly protected by the Ordinance unless within one of the stated exemptions.

The Commissioner of either Territory may make regulations exempting any industry from coverage. Farming and ranching, now exempted, may be brought within the scope of the Ordinances by regulation.

Excluded from both Ordinances are casual workers, outworkers (homeworkers), domestic servants, members of the legal, medical or accounting professions and their office employees (in the Yukon Ordinance, also members of the engineering profession and their office employees) and employees of financial, insurance, real estate, brokerage or agency firms. Other classes of persons may be exempted by regulation.

Persons employed by the Government of either Territory are protected, unless eligible for compensation under the Government Employees Compensation Act.

An executive officer of a corporation may be exempted from coverage on request, enabling him to maintain his right of action in the event of accident.

Both Ordinances make provision for voluntary coverage of excluded employments on the application of the employer. Coverage by voluntary application ceases

³ The Board consisted of the Chairman of the Ontario Workmen's Compensation Board, who acted as chairman, a commissioner of the Manitoba Board and a former commissioner of the British Columbia Board.

on the first day of January following a request by the employer for withdrawal.

Members of the employer's family who are employed by him and living with him may be regarded as workmen only if, in the employer's application for insurance, they are specifically named as workmen and if they are on his payroll. The employer himself may be deemed a workman for purposes of insurance coverage and compensation, if he includes himself in his payroll at an amount not exceeding \$5,600 as his annual remuneration.

The Ordinances define "accident" in broad terms, similar to those of the Manitoba Act (see p. 5), thus eliminating the need for a schedule of industrial diseases. Under this general definition, any industrial disease may be compensated if it is shown to have been contracted due to the nature of the employment.

The Ordinances provide for a one-day waiting period, as in five of the provincial Acts, with compensation payable from the day following the accident.

Apart from the different system of payment by employers (that is, an individual liability and insurance coverage system instead of collective liability), the Ordinances follow the pattern of the provincial Acts and are generally similar. They were originally patterned on the Act of Alberta. Increases in benefits are not made retroactive. Benefits payable to dependants in respect of accidents occurring after January 1, 1967, in the Northwest Territories and after April 1, 1967, in the Yukon are set out below. Lesser amounts are payable in respect of earlier accidents, the amount of the pension depending on the scale in effect at the date of the accident.

Where a workman dies as a result of an accident, the widow or invalid widower is entitled to a lump sum of \$300 and a pension of \$100 a month. Necessary burial expenses, not exceeding \$300, may be paid, and, where necessary, a further sum not exceeding \$100 for transportation of the workman's body from the place of death to his usual place of residence. Provision is made, as in Alberta, for payment of such an additional amount as the Referee may see fit, not exceeding \$15 a month, to a dependent widow in necessitous circumstances because of illness.

On remarriage a dependent widow receives a lump sum of \$1,500.

An allowance of \$45 a month is payable to each dependent child under 18 in the Yukon and under 16 in the Northwest Territories. In the Northwest Territories, at the discretion of the Referee, payments may be continued to the age of 18 where a child is attending school and making satisfactory progress. In both Territories, on the order of the Referee, payments may be extended to the end of the school year in which the child reaches the age of 18. Payments to an invalid child are continued, irrespective of age.

An additional payment, not to exceed \$10 a month, as determined by the Referee, must be paid where a child is an orphan.

There is also provision for payment of an additional sum, not exceeding \$15 a month, to a dependent child because of illness.

For dependants other than widow and children, compensation is to be a reasonable sum, to be determined by the Referee, that takes into account the pecuniary loss sustained, but not exceeding \$75 a month to one parent or \$100 a month to two dependent parents.

Compensation may be paid to a common law wife, at the discretion of the Referee, if there is no widow and if she had lived with the workman for the six years immediately before his death, or had lived with him for the two years before his death and had borne him one or more children.

An injured workman is entitled to medical and hospital treatment on the same terms as under the provincial Acts. The Referee may require the employer to pay for the occupational retraining of a permanently disabled workman up to an amount not exceeding \$5,000.

As under the provincial Acts, compensation for disability is based on 75 per cent of average weekly earnings, subject to an annual ceiling. Thus, for the purpose of determining the amount of compensation payable, average weekly earnings must be computed at a rate which, when projected on an annual basis, does not exceed the ceiling of \$5,600 laid down in the Ordinances. The \$5,600 maximum, the same as that provided for in the Alberta Act, applies only with respect to accidents occurring after January 1, 1967, in the Northwest Territories and after April 1, 1967, in the Yukon. Lower ceilings are applicable with respect to earlier accidents.

For temporary total disability, a workman is entitled to a weekly payment as long as disability lasts equal to 75 per cent of his average weekly earnings during the previous 12 months. Where it is not practicable to calculate the workman's average earnings over a 12-month period, the earnings of a person employed in the same grade of employment may be taken or compensation may be based on the earnings of the workman at the time of the accident.

Compensation for temporary partial disability is a percentage of the amount payable for temporary total disability, depending on the extent of impairment of earning capacity.

Where permanent total disability results from an accident, a workman is entitled to receive a life pension equal to 75 per cent of average weekly earnings (that is, average weekly earnings of workmen employed at similar work in the same occupation), as determined by the Referee. For a workman with a permanent partial disability, compensation is a proportion of 75 per cent of such average earnings, depending on the degree of impairment of earning capacity resulting from the injury.

As in Alberta, the minimum compensation for total disability, either permanent or temporary, is \$35 a week or the workman's average weekly earnings, if less.

The definition of silicosis in the Ordinances follows the definition in the Manitoba Act, permitting a diagnosis of the disease to be established either by X-ray or by the results of other scientific tests or examinations, and requiring the fibrotic condition of the lungs to be

sufficient to produce a substantially lessened capacity for work.

To be entitled to compensation for disability from silicosis, a workman must have been exposed to inhalation of silica dust in his employment in the Territory for a period of at least two years, unless the Referee considers the silicosis to be entirely due to employment in the Territory.

Where a workman has been exposed to silica dust in employment with more than one employer in the Territory, the cost of his claim is to be shared *pro rata* by the several employers.

Subject to a saving clause, the time limit for filing a silicosis claim is 12 months from the date on which the workman is found to have the disease or, in case of death from silicosis, within 12 months from the date of death.

PART II OF ACTS

A further type of individual liability is provided for in Part II of the Act in seven provinces — British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario and Prince Edward Island. Part II applies to industries which are not under Part I, with the exception, in some provinces, of farming, domestic service and fishing, and makes it easier than at common law for an injured workman employed in any such industry to recover damages from his employer. Not only are some of the employer's defences at common law (see p. 1) modified but the employer's liability is extended by making him liable for any defect in his plant or equipment, as well as for his negligence.

Part II of these Acts entitles a workman in an industry outside the workmen's compensation scheme to an action against his employer for personal injury sustained in an accident caused by defective machinery or plant or by the negligence of the employer or of any person employed by him.

By providing that the employer is liable for the negligence of any person in his service acting within the scope of his employment, Part II abolishes the defence of common employment.

It also abrogates the assumption of risk rule. The workman is not to be deemed to have voluntarily incurred the risk of injury by reason only of his continuing in the employment with knowledge of any defect or negligence. In addition, he is to be deemed not to have undertaken the risks due to the negligence of his fellow workmen.

As to the former defence of contributory negligence, Part II provides that it is not to be a bar to the recovery of damages but that negligence on the workman's part is to be taken into account in determining the amount of damages. In other words, any damages recoverable by the workman may be subject to reduction if he himself is found to have been at fault.

Farm workers in Newfoundland, Nova Scotia and Prince Edward Island and domestic servants in Newfoundland, New Brunswick, Nova Scotia, Ontario and Prince Edward Island are excluded from Part II. This means that any of these workers who are not covered by Part I by application are not entitled to sue their employer for negligence under Part II, with the advantages Part II gives. In this way they are left as they were at common law, with a common law right to sue.

On the other hand, farm workers in British Columbia, Manitoba and New Brunswick, and domestic servants in British Columbia and Manitoba, are not excluded from Part II. In these provinces such workers who are outside the collective liability system have the advantages of the changes in the common law rules brought about by Part II.

The Manitoba, Newfoundland and Ontario Acts also provide that casual workers and outworkers who are excluded from the collective liability system are permitted to sue under Part II. The Newfoundland Act makes it clear that the same applies to any workers employed in Part I industries and excluded by the Board from the coverage of Part I.

Therefore, these groups of workers traditionally excluded from workmen's compensation coverage have, in some provinces, the protection of Part II of the Act; in others, they are left as they were at common law.

The Saskatchewan Act contains a provision (which formed Part II of the Act as it was originally passed) which preserves to workmen and their dependants in industries not included in the Act or excluded by order of the Board from the Act their rights at common law and under the 1911 Workmen's Compensation Act (an employer's liability statute). In this way all other rights are unchanged, except with respect to employment within the collective liability system.

The Quebec Act (Section 13 (2)) states that it does not do away with any of the common law rights belonging to any persons not subject to its provisions.

The Alberta Act does not make any reference to the rights of workmen outside the workmen's compensation scheme.

CHAPTER XI

THIRD PARTY ACTIONS

A workman may not sue his employer for an injury within the scope of the Act (or Part I), since one of the fundamental principles underlying the compensation system is that the benefits to which a workman is entitled are in lieu of all rights of action for damages at law. Further, except in Quebec,⁴ a workman has no right of action against any other employer covered by the Act. In five provinces a workman is also barred from taking action against another workman within the scope of the Act.

From time to time, however, workmen are injured due to the negligence of persons other than their own employers or other employers within the scope of the Act, referred to as third parties, and in such circumstances may take action against the person alleged to be responsible for the injury.

The Alberta provisions dealing with third party actions are somewhat different from those of the other provincial Acts, and are described separately below.

In all the provinces except Alberta, if a workman suffers injury in an accident occurring in the course of his employment for which he is entitled to compensation, and the circumstances are such as to entitle him to take court action against a third party, he has the option of claiming compensation or of bringing an action.

In British Columbia, Ontario, Quebec and Saskatchewan, the election must be made within three months after the accident, or, in fatal accidents, within three months after the workman's death. Except in British Columbia, the Board has authority to extend the period. In Nova Scotia, the workman must give the Board written notice of the remedy he has elected to pursue within six months from the date of the accident.

In Manitoba, Quebec and Saskatchewan, the Board may, in its discretion, provide a workman who is in need of immediate special care or an operation with such medical or surgical treatment as may be required, even though he has not filed a claim or made an election. The cost incurred in this is a first charge (in Quebec, a privileged claim ranking immediately after law costs) against any sum recovered by the workman in any action that he may afterwards bring against the third party. In the other provinces the Board has no authority to pay compensation or provide medical treatment until the workman elects to claim compensation under the Act.

Under all the Acts (except Alberta), the injured workman is always protected up to the full amount of compensation to which he is entitled. If he chooses to sue and recovers less than his compensation benefits would have been, he is entitled to compensation under the Act to the amount of the difference. In Manitoba, in

such circumstances the Board may take possession of the money recovered through the action and apply it towards the periodic payment of compensation.

Under the Manitoba, Newfoundland, Nova Scotia and Saskatchewan Acts, no compromise settlement of an action or cause of action at an amount less than the compensation payable may be made unless the Board gives its approval (in Manitoba and Saskatchewan, written approval). In British Columbia, if, after a settlement out of court, made with the written approval of the Board, the workman or his dependants collect less than the amount of compensation payable, the difference is to be paid as compensation under the Act. In Quebec, no agreement or compromise between the parties respecting the action or right of action is valid, unless approved by the Commission.

If the injured workman chooses to claim compensation, the Board becomes subrogated to his rights. This means that the workman's right of action against the third party passes to the Board. On subrogation, the Board has full power to determine whether it will sue the third party or make a compromise settlement. Some Acts state that the Board may bring an action in its own name or in the name of the workman or dependant. (In Manitoba, the Board may also enter an action jointly with the injured workman or his dependant). Other Acts provide that it is not obligatory upon the Board to sue for or require payment of damages, unless it thinks fit to do so.

Under the Ontario and Quebec Acts, the Board or the employer, whichever must pay the compensation, is subrogated to the employee's right of action against a third party. In an industry under Schedule 2 (see p. 48), if a workman elects to claim compensation under the Act, his employer, who is responsible for the payment of compensation, is subrogated to the rights of the workman or his dependant and may sue to recover damages from the person responsible for the accident.

The Quebec Act states that subrogation arises from the mere fact that the workman or his dependants elect to claim compensation, and that the Commission or employer, as the case may be, may sue for damages only to the extent of the amount that the Commission or employer may be called upon to pay as a result of the accident. In other words, the Commission or employer is only permitted to sue for the amount of compensation payable.

Further, the Quebec Act requires the Commission or employer to return to the third party any moneys not actually paid out as compensation. It states that, if the Commission or employer happens to be freed afterwards from the obligation of paying a part of the compensation so recovered, the sum not used must be reimbursed within the month following the event which determined the cessation of compensation.

⁴In Quebec, the right of action is limited to recovery of the difference between the amount of compensation paid and an amount which the court considers to be full damages for the loss suffered.

In Quebec, while the Commission is restricted to suing only to the extent of the compensation payable, the injured workman is expressly given the right, even though he has elected to claim compensation, to sue a third party under the common law (any person other than the injured workman's employer) to recover the difference between the amount of the compensation received by him and the amount of the loss actually suffered. In such circumstances the court assesses the total damages recoverable and deducts from such sum the amount of the compensation awarded.

In no other province is the Board's subrogation limited to the amount paid out to the workman under the Act. Where the Board is not limited to the sum paid out in compensation, it may include, in the amount of damages sued for, an amount for pain and suffering, as well as the full amount of wages lost and medical expenses.

In British Columbia, if more is recovered in a third party action than the amount of compensation to which the workman was entitled, the excess, less costs and administration charges, may be, and in practice is, paid to the injured workman or his dependants. The same is true in Newfoundland; the Act emphasizes that the sum is payable in the Board's discretion and the workman is not entitled to it as a matter of right. The Ontario,⁵ Quebec and Saskatchewan Acts merely state that any sum recovered from the third party by the Board is to form part of the Accident Fund.

The British Columbia and Ontario laws contain a provision which states that, where in a third party action (brought by a workman, his dependant or the Board) it is found that the accident was due partly to the negligence of one or more employers under the Act (in Ontario, an employer or a workman of an employer under the Act), damages may not be collected from the third party for that portion of the loss or damage caused by the negligence of such employer (or workman) and that the court is to determine the portion of the loss or damage caused by such employer (or workman), although the latter is not a party to the action.

The Alberta Act does not give the injured workman the right of election. Where an accident occurs in the course of his employment entitling him to compensation under the Act, and the circumstances are such as to entitle him to an action against a third party, the Board is subrogated to all his rights or those of his dependants against the third party.

On subrogation of the Board, no payment to the workman or settlement of the claim may be made without the Board's consent, and any payment or settlement so made is null and void and of no effect.

With the consent of the Board, the workman may take action against the third party. All moneys recovered as a result of action taken or settlement made by the

workman must be paid to the Board and are distributed as follows:

- (1) legal fees and disbursements are paid;
- (2) 25 per cent of the gross amount received by the Board is paid to the injured workman;
- (3) the costs of the accident to the Board, including the capital cost of any pension award, are retained by the Board;
- (4) the excess, if any, remaining after payment of (1), (2) and (3) is paid to the injured workman, upon his releasing the Board from any further claim for compensation or medical aid in respect of the accident.

The Board may take action in the workman's name without his consent. All legal costs of an action are paid by the Board. Where the Board itself brings an action, it sues for recovery of its costs of the accident, and the amount recovered is paid into the Accident Fund.

Whether or not action has been taken by the Board or the workman, the Board may at any time effect a settlement of a claim for damages for such amount as it deems advisable.

Action against an Employer in an Industry under the Act Precluded

The Acts of all provinces except Quebec abolish any right of action by a workman, his dependants or his employer in respect of an accident against an employer in any industry within the scope of the Act, when the accident arises out of and in the course of the business of the last-named employer. In any case where it appears to the Board that a workman of an employer in one class of industry is injured or killed due to the negligence of an employer or the workman of an employer in another class, the Board may charge the cost of the accident to the class to which the last-mentioned employer belongs. In British Columbia, Manitoba and Saskatchewan, the Board may charge to the class of the employer held responsible the entire compensation cost or such part of the compensation as it deems appropriate.

The Alberta Board has the further authority, in a case where it appears that the injury or death was due to the negligence of two or more persons, one of whom may be the workman, to apportion the costs of the accident as between classes of employers in accordance with the degree of negligence involved, and, where the degree of negligence cannot be established, to charge the costs equally to the classes concerned.

INJURED WORKMAN'S RIGHT OF ACTION AGAINST ANOTHER WORKMAN

In four provinces (Alberta, British Columbia, Nova Scotia and Prince Edward Island) a workman, although barred from taking action against his own or another employer covered by the Act, retains his common law rights to sue a workman of another employer within the scope of the Act whose negligence caused the accident.

⁵ The McGillivray Report (p. 186) states that in practice any surplus over and above the costs of the Board (or of most employers who are individually liable) is paid to the injured workman or his dependants.

In Nova Scotia, the Act prohibits the taking of action "against an employer, his servants or agents". The words "his servants or agents" were added in 1959, on the recommendation of the McKinnon Commission, to give freedom from liability to suit to representatives of the employer who have managerial or supervisory duties. The workman's rights to take action against another workman are preserved.

In Alberta, action by one employee against another can be taken only with the Board's consent.

In Manitoba, Newfoundland, New Brunswick, Ontario and Saskatchewan, a workman has no right of action for damages against another workman, that is, a workman of any employer in an industry under the Act.

The Quebec Act states that no action may be taken against "the workmen, servants or mandataries" of the employer of the injured workman by reason of any fault committed in the performance of their duties. Thus, a workman is precluded from suing a fellow workman but may sue a workman of another employer (see p. 67).

AUTHORITY OF BOARD TO DETERMINE RIGHT OF ACTION

Under the British Columbia, Manitoba, Newfoundland, Ontario and Saskatchewan Acts, the Board has jurisdiction to decide whether or not under the terms of the Act a workman's or dependant's right of action is

taken away from him. In an action in respect of an employment injury brought against an employer by a workman or dependant, the Board may, on the application of any party to the action, adjudicate and determine whether the right of action is taken away by the Act. Except in Newfoundland, the Board's decision on the matter is final and conclusive and there is no appeal to the courts from the Board's adjudication. The Newfoundland Act was amended in 1967 to remove the provision stating that the Board's determination was final and conclusive, thus permitting an appeal to the courts.

The Ontario and Saskatchewan Acts state that the Board has power to adjudicate the question of the plaintiff's right to compensation as well as whether the right of action is taken away by the Act. The comparable provision of the Alberta Act relates only to the determination of the question of the plaintiff's right to compensation. It authorizes the Board to adjudicate, on the application of any party to an action, and states that the Board's decision on the matter is final and conclusive.

A provision contained only in the Alberta Act states that an injured workman or his dependants have no right of action against an employer or workman covered by the Act for any damage or harm done to the workman arising out of first aid treatment or assistance given him following a compensable accident, except for "gross negligence or wilful and wanton misconduct".

CHAPTER XII

Accident Prevention and Safety Inspection

Accident prevention is an integral part of the workmen's compensation system of all Canadian provinces. The Tysoe Royal Commission Report (p. 18) emphasized the importance of accident prevention in the scheme of the Act, stating that:

The prime mission of those who administer workmen's compensation and the prime purpose of the Act is not to furnish financial benefits, but to promote and encourage measures for the prevention of injury to workmen in the course of their work and, should any be so unfortunate as to become disabled as a result of such injury, means for their rehabilitation and return to useful employment as soon as possible.

In all provinces the Board has inspection powers. The Acts (except that of Manitoba) give the Board authority to inspect the premises of an employer within the scope of the Act to ascertain whether proper precautions are being taken for the prevention of accidents and if the safety appliances or safeguards required by law are being used. The comparable Manitoba provision is in less specific terms, giving the Board the right of entry into an employer's establishment "for any purpose which the Board may deem necessary". The restricted wording of the Manitoba Act is explained by the fact that until recent years the Board had no responsibility for accident prevention. In 1965 the Board was made the provincial agency responsible for inspection and enforcement of the province's general safety law.

The role of the Workmen's Compensation Board in the field of accident prevention varies in the different provinces. In one group of provinces, accident prevention comes under the direct control of the Board. Three other provinces follow the original German plan of assigning responsibility for accident prevention to employers' associations. These associations are primarily safety education and promotion organizations and have no law enforcement powers. Enforcement of safety legislation in these provinces is the function of the provincial Department of Labour. In one province, New Brunswick, an Industrial Safety Council, consisting of the Deputy Minister of Labour, the chairman of the Workmen's Compensation Board, the Executive Director of the Industrial Safety Council and 12 other members representative of labor, management and government, is now responsible for the safety education and promotion activities formerly carried on by an employers' accident prevention association and the Workmen's Compensation Board. Power to enforce safety legislation is vested in the Department of Labour.

BOARDS DIRECTLY RESPONSIBLE FOR ACCIDENT PREVENTION

In those provinces in which the Board has direct responsibility for accident prevention (Alberta, British Columbia, Newfoundland, Prince Edward Island and

Saskatchewan), it has wide statutory powers to make and enforce regulations, to require the installation of necessary safety devices, to carry out an extensive educational program and to take other measures to protect workmen against injury in the course of their employment.

In Manitoba, the Board has the duty of enforcing the Employment Safety Act, which is applicable to all workers in the province except those employed in agriculture, domestic service and mining. The Board is empowered, with the assistance of joint advisory committees, the establishment of which is provided for, to formulate and recommend reasonable safety standards to be embodied in regulations.

The reason for the transfer to the Board of the authority to enforce safety legislation, previously vested in the Manitoba Department of Labour, was stated in the Legislature by the Minister of Labour as follows:

It would seem reasonable that the agency which levies and pays for compensable accidents should control the accident prevention program. The Board will thus be acting as a guardian of the employers' fund as well as a protector of the employees' rights in this area. We feel, therefore, that it is reasonable that the Board should, in their total operation, be charged with the reduction of accidents which will in turn ultimately effect a reduction in compensation levies and human suffering.

The Boards maintain inspection staffs, whose function is to inspect establishments and to issue orders for the correction of unsafe working conditions or practices. In addition to their enforcement duties, inspectors give advice and assistance to employers on safe work procedures and the organization of safety programs.

The British Columbia, Newfoundland and Saskatchewan Acts set out the Board's authority with regard to accident prevention in almost identical terms.

The Board may make safety regulations, of either general or special application, and may appoint advisory committees on which employers and workmen are represented to recommend the safety standards that should be embodied in such regulations. In British Columbia, before regulations are adopted, they must be considered at a public hearing, notice of which must be given in the press not less than 10 days before the hearing. To consider the draft regulations, the Newfoundland and Saskatchewan Boards may hold a conference with a committee of not more than five employers and a committee of an equal number of workmen in the industries affected.

The Acts state that the regulations may apply to both employers and workmen, indicating that a legal responsibility may be placed on the workman to wear personal protective equipment and to use reasonable care to ensure his own safety and that of his fellow workmen.

The Board has authority to charge any class, subclass or employer with the cost of any expenditure made under the Act for the benefit of that class, subclass or employer, including the cost of investigations, inspections and other services rendered for the prevention of accidents.

The Alberta Board's general powers are similar to those of the Boards of British Columbia, Newfoundland and Saskatchewan. The Board's authority to regulate working conditions extends to sanitation, heating, where practicable, and ventilation. It is required to carry on an education and instruction program in accident prevention and first aid.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install or adopt any safety device that it considers necessary for the prevention of accidents or disease, and may fix a reasonable time within which the order must be carried out. In Alberta, if an employer fails to notify the Board within the time specified of his compliance with such an order, the Board may order a reinspection of the premises at the employer's expense.

All the above-mentioned Acts, except that of Prince Edward Island, give the Board the ultimate power of closing down a plant for flagrant violations of safety requirements. If an employer fails, neglects or refuses to install and adopt safety devices, as required, or if, in the Board's opinion, conditions of immediate danger exist that would be likely to result in injury to any person, the Board may order the closing down of the whole or a part of the employer's operation, until corrective measures are taken.

Under the British Columbia, Newfoundland and Saskatchewan Acts, failure to close down a plant on the order of the Board is an offence punishable by a fine, and each day the failure continues constitutes a new offence.

The Alberta Act authorizes the Board to seek an injunction as a means of enforcing a stop-work order. Where an employer fails to comply with an order to close down all or part of his place of employment, the Board may, after giving three days' notice, apply to the Supreme Court for an injunction prohibiting the employer from carrying on operations. The Court may make such order as, in its opinion, the justice of the case requires.

In Alberta, before commencing the operation of a mine or plant in which power-driven machinery is used, an employer must obtain the permission of the Board. In Alberta, British Columbia, Newfoundland and Saskatchewan, leave from the Board must also be obtained for the resumption of operations in a mine (except in British Columbia) or establishment which has been out of operation for seven months or more and in which power-driven machinery is used. Leave to operate is granted after inspection. Pending inspection, the Board may issue a temporary permit.

To a greater extent than any other Board, the British Columbia Workmen's Compensation Board has supervision and control over accident prevention and safety inspection in the province. It is the provincial agency

directly responsible for setting safety standards which have the force of law, and its large staff of inspectors, located in key industrial areas of the province, enforces these standards.

The Board is also active in the fields of industrial hygiene, dust control and ventilation, and carries out surveys and investigations to study special industrial health problems that require controls.

The safety law which the Board enforces is its Accident Prevention Regulations, a comprehensive safety code designed to ensure the protection of workmen against all types of industrial hazards. The Accident Prevention Regulations, which were revised in 1966, after intensive consultations with management and labour, including a 10-day hearing, are published in a pocket-size book of 172 pages.

The Board has full authority to enforce these Regulations. If an employer fails to observe any safety regulation, the Board may lay a charge against him in magistrate's court and he is liable to a fine of not less than \$25 and not more than \$500. The Board has also power to charge an employer with the compensation costs of an accident, up to a maximum of \$1,000, if in its opinion the accident was due entirely or mainly to the employer's failure to comply with the Regulations or directions of the Board. As already indicated, flagrant violations may result in a plant being closed down.

The Alberta Board has made safety regulations for the major hazardous industries of the province. Its safety regulations govern building, construction and demolition; trenching and excavating; the lumbering industry; woodworking operations; grain elevators and flour and feed mills; the petroleum and natural gas industry; pipelines; automobile repair shops and garages; ventilation and control of gases, vapours, mists, fumes, smoke or dust; explosives; guards; laundry and dry cleaning machinery; power transmission machinery and equipment; and welding. Since 1965 the Board has been engaged in a continuing program of revision of its safety regulations.

The Board has the necessary power to enforce these regulations and, where warranted, to impose a penalty. The Act provides for a maximum fine of \$100 for a violation of any provision of the Act or regulations.

Further, an employer may be held liable for payment of up to one-half of the compensation costs of an accident resulting from his failure to comply with the regulations or directions of the Board. For gross disregard of safety regulations, a plant may be closed down.

While the Board carries out inspections to see that safety regulations are observed, its basic approach to the problem of accident prevention is through education. Its Accident Prevention Branch conducts safety seminars for groups of employers. Various classes of employers have been assisted by the Board to form safety councils in their own industries.

The Saskatchewan Board's safety program, like that of the Alberta Board, is based largely on safety education. One of the Board's major activities in this field has been the provision of basic safety training courses for supervisors in industry. Supervisors representing nearly

every industry in the province have participated in this program. Board-financed accident prevention associations have been formed in a number of industries.

The Board also carries out its responsibility of inspecting industries within the scope of the Act. Apart from technical inspection staffs, it is the only authority which makes safety inspections in the province. It has made safety regulations for construction and related industries. Where an employer contravenes or fails to comply with these regulations, the Board, at its discretion, may invoke penalties as provided under the Act. The Act provides for a fine of up to \$50 for a violation of any regulation.

In Manitoba, inspectors appointed under the Employment Safety Act are authorized to issue written orders to employers, requiring them to take remedial action within a specified time, or to employees, ordering them to do whatever is necessary to control a danger. An inspector is also authorized to issue stop-work orders. An inspector's order may be appealed to the Board, which is required to hold a hearing before denying an appeal in whole or in part.

A fine of up to \$500 or imprisonment for up to six months, or both, may be imposed for any infraction of the Act, regulations, or an order of the inspector or the Board. An offender may be charged with a separate offence for each day the violation continues.

The Board is authorized also to conduct research into employment safety and to develop and carry out safety education programs.

Costs incurred under the Employment Safety Act are paid from the Accident Fund, and the Board is authorized to make a special assessment on any class or subclass of employers or on any employer by reason of any cost or expenditure incurred in respect of that class or subclass or of that employer.

The Newfoundland Board has issued General Safety Regulations, modelled on the Accident Prevention Regulations of British Columbia, and safety regulations governing motor vehicle repair shops and garages and the woodworking industry. The Board carries out a safety education program, including the training of supervisors in industry and classes in first aid. The Newfoundland Industrial Safety Association, which operates under the direction and with the financial support of the Board, holds an annual convention.

The Prince Edward Island Act contains a provision, similar to that in the Alberta and British Columbia Acts, which enables the Board to charge an employer with all or part of the compensation costs payable for an accident resulting from his failure to comply with safety requirements. In Prince Edward Island, payment of a sum not exceeding one-half of the compensation payable may be required. The Board conducts safety courses for foremen and supervisors and sponsors an annual industrial safety conference.

EMPLOYERS' SAFETY ASSOCIATIONS

The Acts of Nova Scotia, Ontario and Quebec provide for a different approach to accident prevention.

These permit the employers in any of the classes in which employers are grouped for assessment purposes to form an association to carry out accident prevention measures within the class. The associations are safety education and promotion bodies, with no power to enforce safety orders. They operate on funds supplied by the Workmen's Compensation Board but all these funds are charged against the class or classes which the association represents.

Grants made by the Nova Scotia Board for accident prevention in 1966 totalled \$85,231.79 or 1.17 cents out of each dollar disbursed. In Ontario, a total of \$3,457,856 was spent for accident prevention purposes in 1966 or 3.5 cents out of every dollar expended by the Board. Grants to safety associations in Quebec in 1965 totalled \$600,164 or 1.22 cents out of each dollar expended by the Commission.

The Nova Scotia Accident Prevention Association undertakes safety inspections and accident prevention programs in all the industries in Nova Scotia that are within the scope of the Act.

In Ontario, employers in 18 classes of industry covered by the Act, representing practically all manufacturing (except papermaking) and the retail trade, are associated in a general association, the Industrial Accident Prevention Association; Ontario Pulp and Paper Makers' Safety Association; Mines Accident Prevention Association of Ontario; Transportation Safety Association of Ontario; Electrical Utilities Safety Association of Ontario; and Construction Safety Association of Ontario.

Membership in an employers' association is not compulsory. All Schedule 2 employers¹ and a few groups in Schedule 1, including farming², are outside the jurisdiction of any existing organization.

Closer supervision of employers' safety associations by the Workmen's Compensation Board was provided in an amendment to the Ontario Act in 1964. The Act now explicitly states that the aim of accident prevention associations is education in accident prevention and that such associations are under the control of the Board.

To implement this provision, the Board set up a new Department of Safety Education in 1965 and appointed a Director of Safety Education. This official is charged with the duty of co-ordinating the safety education programs of the seven safety associations and developing centralized services under the Board's direction.

In Quebec, employers in 19 of the 24 classes in which industry is divided under the Act are associated in one body, the Industrial Accident Prevention Association (Association de Prévention des Accidents Industriels). Employers in the pulp and paper industries, lumbering and metal mining are organized in separate associations. The names of these associations are: The Quebec Pulp and Paper Safety Association, Inc. (Association de Sécurité des Pâtes et Papiers du Québec, Inc.);

¹Safety programs are carried on by the industries included in Schedule 2.

²The Board has undertaken to assist the Farm Safety Council of Ontario to develop a safety program for the farming industry.

Quebec Lumber Industries Safety Association, Inc. (Association de Sécurité des Industries de Sciage du Québec, Inc.); and Quebec Metal Mines Accident Prevention Association (L'Association des Mines de Métaux du Québec pour la Prévention des Accidents).

The Quebec Act was amended in 1964 to provide for more participation by labour in the work of accident prevention. The Act, as amended, requires an accident prevention association to be representative of both employers and workmen, if it wishes to have its rules approved and made binding by the Lieutenant-Governor in Council on all employers in industries included in the class. A first step towards greater labour participation in industrial safety has been the establishment by the Industrial Accident Prevention Association of many joint safety committees in manufacturing, transportation, construction and hospital services. Similar steps have been taken by the other accident prevention associations as regards their own memberships.

The Acts provide that accident prevention associations may make rules which are binding on their members. In practice, however, the rules made are codes of safe work practices, without binding force.

The Nova Scotia Act states that the constitution of an accident prevention association must be approved by the Board. It further provides that, if the Board approves rules made by the association, they become binding upon all employers in the class, subclass or group, whether members of the association or not.

In Ontario, if the Board considers an association to be sufficiently representative of the employers in the industries included in the class, and approves its rules of operation, the rules, if approved also by the Lieutenant-Governor in Council, become binding on all the employers in the class. The Quebec provision is similar except that an association is required to be representative of workmen as well as employers before the Commission may approve its rules and make them binding on all the employers in the class concerned.

Most of the employers' associations employ field staffs whose duties are to visit the industries of member companies, to advise on how to eliminate hazards, and to assist the employer to organize a plant safety program. Associations also prepare and publish recommended safety codes. The work of the associations consists of many forms of safety education and promotion. These may include encouraging the training of supervisory and other personnel; conducting safety courses; holding annual competitions among member companies in accident prevention; collecting statistical data on accidents and distributing it to members; and acting as a clearing house for information. Safety promotion is carried on by some associations by means of posters, pamphlets, films, newspapers, radio and television. The Ontario I.A.P.A. sponsors an October safety drive, and it and most other associations hold an annual conference.

In Ontario, as a means of co-ordinating the work of the accident prevention associations with the work of the Department of Labour in the administration of safety laws and with the safety activities of labour

groups, the Labour Safety Council of Ontario was reorganized in 1966. The Council, which was set up in 1962, is a purely advisory and research body, whose function is to advise the Minister of Labour on matters pertaining to safety education, enforcement and accident prevention.

The Council now consists of a chairman, a representative of each of the seven employers' safety associations organized under the Workmen's Compensation Act, and an equal number of union representatives in the industries covered by these associations.

NEW BRUNSWICK INDUSTRIAL SAFETY COUNCIL

In New Brunswick, the Industrial Safety Council, established in 1962, is the agency responsible for initiating and carrying on a co-ordinated and comprehensive safety education program in the province. Funds for the operation of the Council are provided by the Workmen's Compensation Board. The Board furnishes statistical data to the Council, giving it detailed information on industrial accidents. The statistical information furnished by the Board forms the basis for the safety education programs of the Council and the inspection activities of the Department of Labour.

The Industrial Safety Council and the Department of Labour collaborated in the formulation of the Industrial Safety Code adopted in 1965, a general safety code issued under the authority of the Industrial Safety Act, and covering all industries except mining. They also act in close liaison with respect to inspections at the plant level. Copies of reports of Department of Labour safety inspectors are forwarded to the Council in cases where an improved safety program appears to be required. The Council also sponsors industrial safety conferences.

SAFETY COMMITTEES

In British Columbia and Newfoundland, employers in industries to which the Act applies are required to appoint safety committees. The British Columbia regulations state that the committee must be a joint committee, with its members designated in equal numbers by the workmen and the employer. The function of a safety committee is to correct unsafe conditions and practices and to develop and maintain interest in accident prevention. The committee in no way removes management's responsibility for the safe operation of the undertaking.

In British Columbia, an accident prevention committee must be established in every place of employment in which 20 or more workmen are employed and in which the nature of the work is classified by the Board as hazardous.

In work classified as of limited hazard, an accident prevention committee must be set up if more than 50 workmen are employed.

In hazardous operations with fewer than 20 workmen, a monthly meeting under the direction of a supervisor must be held to discuss accident prevention. The management is required to maintain a record of such meetings and the matters discussed.

When management and workmen's representatives consider that the functions of a committee could be

more effectively performed by other means, they may jointly submit alternative proposals for Board approval.

An accident prevention committee in British Columbia must have a minimum of four regular members who are experienced in the type of operations concerned; where required by the nature or size of the operation, the membership may be increased or additional committees established. The chairman and secretary are to be elected from and by the membership, and, in the event of a tie vote, the employer must appoint the chairman and the workmen's representative must elect the secretary.

In Newfoundland, every factory, construction camp, workshop or other undertaking employing 10 or more workmen must have a safety committee of not less than two members. Each committee member is required to have at least one year's experience in the work involved.

In both provinces, a safety committee is required to hold regular meetings at least monthly and to make a general inspection of the employer's operations at least once a month. Reports of such inspections and the committee's findings must be communicated to management. Committees are also required to assist in the investigation of accidents, and in Newfoundland must submit a report to the employer, with recommendations concerning each accident. Committees in Newfoundland must also check first aid supplies and see that a proper record is kept of all injuries. In British Columbia, records of accidents, safety inspections and accident investigations must be kept by management and made available to the committee.

In British Columbia, the committee secretary must send copies of minutes of meetings promptly, not only to the Board but also to the employer and to the labour organizations involved.

In Alberta, regulations making the establishment of safety committees mandatory in plants with a work force of 20 or more were rescinded from March 1, 1967. The organization of plant safety committees is no longer a Board requirement. As in other provinces (except British Columbia and Newfoundland), committees may be set up on a voluntary basis at the option of the employer, or employer and trade union. The Board's safety supervisors, if they consider it practical and useful, may recommend to employers that they organize a safety committee.

Although not a legal requirement laid down by the Workmen's Compensation Commission, a large number of joint committees have been set up in Quebec by the Industrial Accident Prevention Association in industries operated by its member companies. This move followed a 1964 amendment to the Act providing for labour participation in the work of accident prevention. Since the amendment, more than 2,500 safety committees with labour representation have been established.

The Quebec Metal Mines Accident Prevention Association amended its rules of operation to require each member company to hold regularly scheduled monthly meetings of employees to discuss accident prevention or to establish a joint safety committee. The Quebec Pulp and Paper Safety Association has also established joint

safety committees, and the official policy of the Quebec Lumber Industries Safety Association is to encourage the formation of such committees.

Mr. Justice McGillivray in his Royal Commission Report (p. 173) expressed the opinion that the establishment of safety committees should not be made compulsory. In his view, persuasion was the more effective means of promoting their establishment, and he recommended that efforts should be continued by the safety associations and the Board to encourage the formation of joint safety committees at the plant level.

However, to enable the Board to bring pressure upon an employer with a bad safety record, Mr. Justice McGillivray further recommended that Section 86(6a) of the Ontario Act should be amended to give the Board power to direct the formation of safety committees at plant level. Section 86(6a) permits the Board to increase the assessment of an employer where the work injury frequency and accident costs of that employer are consistently higher than the average. The amendment would be a further means of effecting improvement in safety measures.

PENALTY ASSESSMENTS FOR UNSATISFACTORY SAFETY PERFORMANCE

A number of the Boards (Alberta, British Columbia, Ontario, Prince Edward Island, Quebec and Saskatchewan) have the power to require employers to pay an increased rate of assessment as a penalty for failure to comply with safety requirements. In Alberta, British Columbia and Ontario, the Board may also increase assessment rates for failure to comply with first aid regulations. The power to levy a penalty rate of assessment is of special importance where the Board does not have direct control over accident prevention.

The Alberta, Ontario, Quebec and Saskatchewan Acts provide that, where the Board considers that sufficient precautions have not been taken to prevent accidents or that working conditions are not safe, it may add a specified percentage to the amount of the employer's assessment (such percentage as the Board deems just).

The Quebec Commission has the additional authority to transfer an industry in which it considers proper accident prevention precautions are not taken or machinery or appliances are defective or insufficient to Schedule 2, in which employers are individually liable. That is, the employer could be required to pay the full costs of the accident, instead of having the costs spread among a whole class of employers, as is usually the case.

The Alberta, Ontario and Quebec Acts state that the power to impose a penalty where unsafe working conditions exist may be exercised as often as, in the Board's opinion, the occasion may require. The Alberta and Ontario Boards may, however, relieve an employer, in whole or in part, from liability, if satisfied that the fault was excusable.

The Acts stipulate (except in Alberta) that, in the Board's discretion, any additional percentage levied and collected is to be added to the Accident Fund or applied

in reduction of the assessment of the other employers in the class or subclass to which the employer concerned belongs.

Under Section 37 of the British Columbia Act, employers who have not complied with the Accident Prevention Regulations or first aid requirements are assessed a penalty rate. The penalty rate (referred to as the regular rate) is one-half of one per cent higher than the basic or preferred rate which is payable by all employers who are in compliance with Board regulations. In no case may the penalty rate exceed 50 per cent of the preferred rate. What this amounts to is that the penalty rate is one and one-half times the basic rate where the basic rate is under \$1 (per \$100 of assessable payroll) and 50 cents greater than the basic rate where the basic rate is \$1 or more.

In Prince Edward Island, an employer who disregards the recommendations of the safety officer authorized by the Board to inspect his premises is liable to have his assessment rate raised according to the hazard, and, if the hazard is not removed, to be restrained from carrying on operations.

FINANCIAL INCENTIVE

Since the rate of assessment on employers in a class or group is set according to the cost of accidents in the class or group, an incentive is provided for employers to initiate and carry out safety programs. The lower the accident cost, the lower will be the percentage of the annual assessable payroll payable to the Accident Fund. An active accident prevention program is a means of reducing assessment rates.

MERIT RATING

All the provincial Acts except the Act of Prince Edward Island permit the Board, at its discretion, to adopt a system of merit rating, and merit rating plans have been put into effect in some provinces. Merit rating, as described below, consists of both merit and demerit rating plans.

One of the objects of introducing a merit rating plan is to provide a financial incentive to employers to carry on effective safety programs, through a reduction of assessments as a reward for a good safety record or through an increase of assessments as a penalty for an unfavourable accident record. A merit rating plan is also a means of achieving a more equitable distribution of accident costs within a class.

Merit or experience rating plans are usually put into effect only after the taking of a vote in an industry or group, and apply only to employers who qualify with respect to the size of their payroll and their assessment rate.

As pointed out by the Sloan Royal Commission in 1952 (p. R183), "in the application of an experience-rating plan, a minimum number of years' experience and a minimum payroll exposure is necessary in order that basic insurance principles and the principle of collective liability be not unduly violated." Merit rating plans cannot be applied effectively to the operations of the small employer or to firms with low assessment

rates. They are designed to promote accident prevention measures, without departing significantly from the collective liability principle.

Under the Workmen's Compensation Acts, employers engaged in similar types of industry are placed for assessment purposes in classes, which in turn are divided into subclasses or groups.

Each employer is required to send to the Board at the beginning of each year an estimate of his probable payroll for that year and an assessment is levied on the basis of these estimates. At the end of the year the actual amounts of the payrolls are ascertained, the final rates are struck, and the adjusted rate applied.

Where no merit or experience rating system is in effect, all employers in a class or group are assessed at a uniform rate, regardless of their individual accident costs, the rate reflecting the accident experience of the class or group as a whole.

Most of the provincial Acts state that the assessment upon employers in a class or group need not be uniform but may vary for each individual industry or plant in relation to the hazard involved, thus permitting the adoption of a system of merit rating.

If the class or group of which an employer is a member is operating under a merit or experience rating plan, his assessment rate is based on his own accident experience compared with the accident experience of the group as a whole over a specified period (usually three years). Subject to the details of the plan, the employer is entitled to a "merit" credit if his accident record (cost experience) is better than the group's average experience or, conversely, he may be subject to a "demerit" charge in the form of an extra assessment if his accident record is worse than the group average.

A merit rating system has been in effect in Alberta for many years in mining, lumbering, construction, oil well drilling, oil refining and grain elevator operation. It is now applied to most of the classes of industries covered by the Act.

The Alberta Act (Section 64(14)) permits the Board to reduce an employer's contribution to the Accident Fund (that is, apply a system of merit rating) where, in its opinion,

the ways, works, machinery and appliances in any industry conform to modern standards in such manner as to reduce the hazards of accidents to a minimum, and the Board is convinced that all proper precautions are being taken by the employer for the prevention of accidents, and where the accident record of the employer has in fact been consistently good. . .

Under the authority of subsections (15) and (16) of Section 64, the Board has set up a demerit or super-assessment plan, which allows it to assess and levy upon an employer whose accident record so warrants it a super-assessment of up to 25 per cent of the ordinary assessment.

In Ontario, under a similar provision to the Alberta provision quoted above, the Board introduced experience rating in a limited number of groups and classes in 1954. In 1966 it had been extended to 17 of the 27 classes into which industries under Schedule 1 of the Act are divided, and was in effect in 32 out of 109 rate

groups. Experience rating in Ontario is applicable to employers having an annual assessment of \$500 or over and an assessable payroll of \$40,000 or over for each of three consecutive years.

In 1964 a new subsection was added to the Act (subsection 6a of Section 86) providing for a demerit system, enabling the Board to penalize an employer who has incurred an unsatisfactory record in comparison with the industry in which he is classified.

Section 86 (6a) states:

Where the work injury frequency and the accident cost of the employer are consistently higher than that of the average in the industry in which he is engaged, the Board, as provided by the regulations, may increase the assessment for that employer by such a percentage thereof as the Board may deem just, and may assess and levy the same upon the employer.

Conditions under which a demerit charge may be made were laid down in regulations. These permit the Board to increase the assessment of an employer by 100 per cent, based on the actual payroll for the last complete year of operation under review, if (1) in two of the last three complete years of operation he has incurred a deficit accident cost experience; (2) he has incurred a lifetime deficit accident cost experience; and (3) he has incurred during two of the last three complete years of operation a frequency rate of compensable accidents at least 25 per cent higher than the average rate in the industry in which he is classified. The percentage rate of any subsequent increase in assessment is in the discretion of the Board.

The British Columbia and Manitoba Acts contain a provision stating that, where the hazard (in British Columbia, accident cost or hazard) of a particular industry differs from the average of the class to which the industry belongs, as a result, in the Board's opinion, of the manner in which the industry is "circumstanced or conducted", the Board may fix a special rate of assessment to correspond with the relative hazard or accident cost.

There is a similar provision in the New Brunswick Act (and also in the Act of Alberta) that states that the assessment rate may be increased where the hazard is greater than the average of the class, owing to the manner in which the industry is carried on.

The Manitoba Act was amended in 1965 to add specific provisions authorizing the Board to give merit credit to, and impose demerit charges on, employers. The authority given to the Board is stated as follows:

- (2) Where, in the opinion of the board, the record and experience of accidents among the workmen of an employer is better than the average record and experience of accidents among the workmen of other employers in the same class or sub-class the board may reduce the amount of any assess-

ment made upon that employer, or refund a portion of any assessment paid by that employer.

- (3) Where, in the opinion of the board, the record and experience of accidents among the workmen of an employer is worse than the average record and experience of accidents among the workmen of other employers in the same class or sub-class the board may increase the amount of any assessment made upon that employer, or make a special additional assessment upon that employer.

(Section 60)

Three experience rating plans are in operation in British Columbia, applying to the forest products industries (other than logging), logging and construction. Qualifying employers under these plans are those with an assessable payroll of not less than \$20,000 in the forest products and logging industries and of not less than \$75,000 in construction.⁴

New Brunswick has a merit rating system, which is applied to all industries under the Act. The other provinces have not adopted a merit or demerit scheme.

Merit rating has been attacked by organized labour on the grounds that it encourages employers not to report accidents.

The advantages and disadvantages of merit rating under the workmen's compensation program were summed up by Mr. Justice McGillivray (p. 95), as follows:

A merit programme rewards good accident prevention performance by reducing the monetary contribution of the successful and efficient firm to the accident fund. Conversely, a poor accident prevention performance brings an immediate financial penalty in the form of an extra assessment. On the other side of the ledger it must be borne in mind that merit rating is contrary to the principle of collective liability, the premise upon which the major portion of the Act is based. Furthermore, merit rating may have an adverse effect on accident reporting. In marginal cases where the employer can leave the employee on the payroll on some light duty, or perhaps on occasion without any duties at all for a short period of time, it may be of advantage financially to the employer to do so rather than to report the accident and have the cost thereof charged against his average. This course of conduct which could affect the workman medically also makes it difficult, in the event of re-injury or a change of medical condition in future years, to go back and obtain details of the injury at the time of the initial accident. It may also be said that a merit plan rewards the very large efficient company, which can afford safety personnel and additional supervision, at the expense of the small operator. The small operator is also more susceptible to variations in his merit and demerit charges because an accident is financially more significant in his calculations than is the same accident to the calculations of a large operator. Finally, the merit plan is based entirely on the cost of an accident rather than the incidence of accidents. The cost of an accident is beyond the employer's control whereas the number of accidents may by effort on his part be substantially reduced.

³Mr. Justice McGillivray pointed out that Section 86(6a) may be used, apart from the merit rating system, against employers not participating in a merit rating plan to stimulate greater accident prevention efforts. He noted that the Board makes extensive use of this section of the Act.

⁴Tysoe Report, p. 99.

CHAPTER XIII

ACCIDENTS OCCURRING OUTSIDE THE PROVINCE

In the case⁵ *Workmen's Compensation Board v. Canadian Pacific Railway Company* (1920) involving the loss of a vessel which sank with all hands on board outside the territorial waters of British Columbia and the crew of which had been engaged while resident in British Columbia, the British Columbia Workmen's Compensation Board contended that the provincial Act was in reality a form of insurance and consequently extended to residents of the province, whether injured within its boundaries or not.

Embodying this principle, all the provincial Acts make provision for payment of compensation to workmen who are hired by an employer in the province and who are injured in accidents outside its boundaries, but lay down conditions under which such protection is granted.

The determining factors are usually the employer's place of business and the residence and usual place of employment of the workman. Although the Acts vary somewhat, they ensure protection to workmen and guard against any overlapping.

Under specified conditions, which are set out below, a workman usually employed and resident in the province is covered by the Act while employed outside the province for a period of up to 6 months under the British Columbia, Nova Scotia and Prince Edward Island Acts; for a 6-month period, with provision for extension, under the Ontario Act; for up to 8 months under the Newfoundland Act; for a period of up to 12 months, or longer, if the Board permits, under the Alberta Act; and up to 18 months under the Quebec Act. Under the Ontario Act, an extension of coverage may be granted, on the application of the employer, for any period up to a maximum of three years over and above the period of automatic coverage. This means that an Ontario resident may be protected while working outside the province for a period not exceeding three and one-half years. No period is specified in the Manitoba Act.

Compensation may be paid where a workman is injured in employment outside the province, as a result of an accident that would entitle him to compensation if it happened in the province, under the following conditions:⁶

Alberta:

if the workman is a resident of the province or his usual place of employment is in the province; the nature of his work is such that it is required to be performed both in and out of the province; and his employment outside the province is a continuation of employment by the same employer in the province and has lasted less than 12 months, or such longer period as the Board permits.

British Columbia:

if the residence and usual place of employment of the workman are in the province; the employer has a place of business in the province; and the employment has immediately followed employment by the same employer in British Columbia and has lasted less than 6 months.

Manitoba:

if the residence and usual place of employment of the workman are in the province; the employer has an established place of business in the province; and the accident occurs while the workman is temporarily outside the province on the business of the employer.

Newfoundland:

if the usual place of employment of the workman is in the province; the accident occurs while the workman is employed outside the province for some purpose connected with his employment in Newfoundland; and the employment out of Newfoundland has lasted not more than 8 months.

Nova Scotia and Prince Edward Island:

if the usual place of employment of the workman is in the province; the accident occurs while the workman is employed outside the province for some purpose connected with his employment in the province; and the employment out of the province has lasted not more than 6 months.

Ontario:

if the residence and usual place of employment of the workman are in the province; the place of business or chief place of business of the employer is in the province; and the employment out of Ontario has lasted less than 6 months, or longer, where the period of coverage is extended by the Board.

Quebec:

if the residence and usual place of employment of the workman are in the province; the employer has a place of business in the province; and the employment outside the province has not exceeded 18 months and was a direct continuation of employment in the province, in the service of the same employer.

The Alberta, British Columbia, Ontario, Quebec and Saskatchewan Acts provide that, where a resident of the province is injured while working outside the province for a company based in the province and has the option of applying for compensation under the local Act, he must choose under which law he will claim compensation and give notice of such election. The Alberta, British Columbia and Saskatchewan Acts stipulate, however, that where an interprovincial agreement is in effect, the right of election is subject to the terms of the agreement.

The Manitoba, Newfoundland, Nova Scotia and Prince Edward Island Acts make it clear that compensation is only payable for an injury occurring outside the province if the workman or his dependants are not entitled to compensation under the law of the place where

⁵ A.C. 184, 48 D.L.R. 218.

⁶ For New Brunswick and Saskatchewan provisions, see p. 78.

the accident happens. Similarly, a workman or dependant who elects to claim compensation under the Alberta Act is deemed to have forfeited all rights to compensation under that Act if he makes a claim under the law of any other country or place in respect of the same accident.

The Ontario Act permits payment of compensation when an accident happens while a workman is out of the province "merely for some temporary purpose connected with his employment", even though the workman is *not* a resident of the province, if the employer's place of business or chief place of business is in Ontario and the workman's usual and principal place of employment is in the province.

A number of the Acts refer specifically to accidents occurring outside the province in employment in connection with the transportation industry, where work is normally performed both in and out of the province. Under these provisions, a workman is covered by the Act of the province of which he is resident for all his duties, whether performed in or out of the province.

Workmen who are employed by employers engaged in the business of operating steamboats, ships, vessels, railways, aircraft, trucks, buses or other vehicles used to transport freight or passengers to or from the province are eligible to receive compensation for an accident happening outside the province under the British Columbia, Manitoba and Ontario Acts, if they are resident in the province concerned and if their work is normally performed both in and out of the province. In Manitoba, this section of the Act applies also to members of a fire brigade or other municipal employees whose duties take them outside the province. The British Columbia Act specifies that both the residence and usual place of employment of the workman must be in the province and that the employer must have a place of business in the province.

There is a further provision in the Ontario Act, applicable only to accidents occurring outside the province in employment in the shipping industry, that states that a workman resident in Ontario is entitled to compensation if either the chief place of business of the owner or charterer of the ship is in Ontario or the ship is registered in Canada, regardless of whether or not the workman had been previously employed in Ontario and of the duration of his employment out of Ontario.

In Quebec, a workman who is employed in a transportation business by land is entitled to compensation for an accident occurring outside the province, if he is a resident of the province and is obliged by the nature of his employment to work both in and out of the province.

A workman in Quebec employed in a transportation business by water and required to work partly within and partly outside the province is eligible for compensation for an accident happening outside the province whether he is a resident of the province or was only hired in the province, if the vessel on which he is registered in a Canadian port or its owner or charterer has his home or principal place of business in the province.

The Prince Edward Island Act provides that, before a workman is required to perform services outside the province in the industry of "navigation", the employer must apply to the Board to have the industry brought under the Act and must pay the required assessment. Failure to do so makes him personally liable for compensation. The industry of "navigation" in this context is limited to work performed on a ship registered in Prince Edward Island or operated by an employer residing or having a place of business in the province while on voyages between Prince Edward Island and New Brunswick, Nova Scotia or Newfoundland.

The New Brunswick and Saskatchewan Acts do not refer to transportation specifically but provide that, where a workman is engaged in work, part of which is to be performed in the province and part in another province or country (in Saskatchewan, an adjoining province or country), the work is considered as done in the province and compensation is payable accordingly.

Compensation is payable under all the Acts only where employers have included the earnings of workmen employed outside the province in their payroll statements to the Board. In British Columbia, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island and Quebec, if an employer fails to include the earnings of such workmen in his payroll reports to the Board, he becomes individually liable to pay the compensation for an accident occurring outside the province, although the British Columbia, Newfoundland, Nova Scotia and Prince Edward Island Acts permit the Board to exercise its discretion according to the circumstances.

In Ontario, when the employer's place of business or chief place of business is *not* in the province, compensation may be paid under certain circumstances. If the employer's place of business is located out of Ontario and the workman is entitled to compensation under the law of the place where the accident happened, compensation is only payable under the Ontario Act, regardless of whether the workman is a resident of the province or not, if the worker's place of employment is in Ontario and he was, at the time of the accident, out of the province merely for some casual purpose incidental to his employment.

RECIPROCAL AGREEMENTS

The Acts of Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Quebec and Saskatchewan provide for interprovincial agreements to facilitate the handling of cases in which workmen are employed outside the province. The reciprocal agreements guard against a duplication of assessments by permitting the employer to pay assessments only to the Board of the province or territory in which the work is done. They also provide for the reimbursement of other boards for payment of compensation made under such agreements.

Under each of these Acts, the Board may make an agreement with the workmen's compensation authority of any other province (in Alberta, Manitoba, New Brunswick and Ontario, with the workmen's compensation authority of any other province or territory of

Canada) with respect to the payment of compensation for injuries to workmen whose work is performed partly in the province concerned and partly in the other province party to the agreement and who are employed in an industry covered by both Acts. In Quebec, any such agreement must be approved by the Lieutenant-Governor in Council.

As indicated above, the employee is covered under the Act of the province in which he is usually employed for a specified period (for example, up to 6 months in British Columbia, not more than 18 months in Quebec) while working outside the province. Without a reciprocal agreement, where the employment is within the scope of both Acts, the employer would be required to pay assessments to the Boards of both provinces. The reciprocal agreement avoids double assessment of employers. The Board of the province in which the accident takes place pays the compensation by reimbursing the Board of the other province.

For example, under the agreement in effect between the Ontario and Quebec Boards, where an employer in Ontario sends an employee who is an Ontario resident and whose usual place of employment is in the province to work in Quebec, and the workman is protected under the Quebec workmen's compensation law, the employer is assessed only by the province (Quebec) in which the employment takes place. It is not necessary for the employer to include in his payroll statement filed with the Ontario Board the earnings of the workman for the time he is working in the other province. So far as the employment as a whole is concerned, the employer is assessed by the Ontario Board for only such wages or salaries as are earned by his workman in Ontario, and by the Quebec Board for only such wages or salaries as are earned by his workmen in Quebec.

Should an injury occur to the workman while working in Quebec, and he elects to claim compensation under the Ontario Act, the Quebec Board, under the terms of the reciprocal agreement, would reimburse the Ontario Board for compensation paid by it, up to the amount payable under the Quebec Act. Similar arrangements and reimbursement may be made between other reciprocal provinces.

The Saskatchewan Act contains two provisions authorizing the making of reciprocal agreements with other provinces, one relating to compensation for industrial diseases, and the other relating to compensation for injuries. These state that the purpose of the agreement is that workmen or their dependants may receive compensation either in accordance with the Saskatchewan Act or in accordance with the Act in force in the reciprocal province.

The Manitoba provision permitting the Board to enter into agreements with other compensation authorities is applicable only with respect to employers and employees engaged in connection with the operation of a ship, railway, aircraft, truck or bus, or to members of a fire brigade or other municipal employees, where the nature of the employment is such that a workman's services must be performed both in and out of the province. The Act stipulates that compensation may be paid

for an accident occurring outside the province in such circumstances, if the workman is a Manitoba resident and if he elects to claim compensation under the Manitoba Act.

The Manitoba Act also permits the Board to make reciprocal agreements, with the approval of the Lieutenant-Governor in Council, with the Board(s) of either or both of the two adjoining provinces, providing for the payment of compensation in respect of industrial diseases incurred by workmen employed in an industry the operations of which extend across the interprovincial boundary. The Board has an agreement with the Saskatchewan Board under this section of the Act covering silicosis claims arising from employment of workmen engaged by the Hudson Bay Mining and Smelting Company Limited whose duties are performed at one time in Manitoba and at another time in Saskatchewan.

Reciprocal agreements are in effect between the Ontario Board and the Boards of Alberta, British Columbia, Manitoba and Quebec. Agreements have also been entered into between the Alberta Board and the Boards of British Columbia and Manitoba.

The agreement between the British Columbia and Ontario Boards, which went into effect on January 1, 1954, besides providing for adjustments of assessments and authorizing reimbursement of one Board by the other for compensation paid, contains the following provisions:

1. That the Board with which an application for compensation is filed shall adjudicate same and its decision shall be accepted by the other Board concerned.
2. That this Agreement shall apply only to such classes of industry and employment as are common to the Provincial Workmen's Compensation Acts administered by the parties hereto.
3. That compensation shall be paid by either party hereto only for disabilities and deaths due to accidents and industrial diseases for which protection is required under its own Act.
4. That compensation shall not be paid by either party hereto with respect to optional protection unless same has been applied for and extended under its own Act.
5. That when a workman's earnings exceed in any year the maximum rate upon which compensation is paid his earnings shall be so pro-rated that in no case shall his employer pay assessments on any earnings in excess of such maximum.
6. That a workman going from British Columbia to Ontario (or vice versa) shall continue to be considered to be protected in the Province of origin until he has reached the Province of his destination and again shall be considered as protected in the said Province of origin as soon as he has left the Province in which he was temporarily doing work.

NON-RESIDENT WORKMEN AND DEPENDANTS

The condition of reciprocal treatment is laid down in all the Acts, except those of British Columbia and Quebec.

The Alberta, British Columbia, Ontario, Quebec and Saskatchewan Acts provide for the payment of compensation to dependants who are not residents of Canada.

The British Columbia Act, in defining "dependents", stipulates that no person is to be excluded as a dependant because he is a non-resident alien. The Act provides that, if the dependants of a deceased workman are residing outside Canada and are entitled to compensation, the Board may award them such lesser sum as, in its opinion, would at the date of the workman's death maintain them in a like degree of comfort as dependants of the same class residing in Canada. The award may be revised upward to the level of benefits payable to a dependant resident in Canada at the time of the workman's death, should any such dependant subsequently become a resident of Canada. The Board is also given discretion to commute the periodical payments of dependants residing outside Canada to a lump sum.

All the provincial Workmen's Compensation Acts provide for the payment of compensation to workmen or their dependants who reside outside Canada, but under most of the Acts compensation is paid only on condition that similar benefits are granted to Canadian workers or dependants by the law of the country in which the workman or his dependants reside. Some of the Acts take into consideration the higher standard of living in Canada than in some other countries and permit the Board to adjust the amount of compensation on this basis.

The condition of reciprocal treatment is laid down in all the Acts, except those of British Columbia and Quebec.

In Quebec, the Workmen's Compensation Commission may award such sum in lieu of compensation as it deems proper to any dependant not residing in Canada.

The Alberta, Ontario and Saskatchewan provisions are similar. Under these laws, non-resident dependants are not entitled to compensation unless the law of the country in which they reside provides for payment of compensation to the dependants of a deceased workman of that country who are resident in Canada. Where there is reciprocal treatment, the compensation awarded to a non-resident dependant may not be greater than that payable under the law of the other country to a resident of Canada. In order to take care of varied situations that may arise, the Board may, in its discretion, notwithstanding the requirement that there be a reciprocal arrangement, award such compensation or sum in lieu of compensation to a non-resident dependant as it deems proper.

The Manitoba provision is exactly like those of Alberta, Ontario and Saskatchewan except that it refers to dependants who are not residents of Manitoba. It can, therefore, be applied to dependants who live in other parts of Canada as well as to persons living outside Canada.

The Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island provisions are permissive only. Each Act empowers the Board to order payment of compensation to a workman or his dependants resident in another province, country or jurisdiction as a result of death or injury occurring within the province, provided similar benefits are payable under the law of the other jurisdiction to workmen or dependants resident in the province in respect of an accident occurring within the territory of the other province or country. In these provinces the Board may reduce the compensation to that payable under the law of the province or country concerned.

The New Brunswick Act states that provision must be made by order in council that the laws of certain other provinces or countries authorize payment of compensation to workmen or dependants resident in New Brunswick in respect of an accident occurring in their territories.

The New Brunswick and Saskatchewan laws specify, in respect of dependent aliens residing outside Canada, that the Board may pay such lesser sum by way of compensation as, according to the conditions and costs of living in the place of residence, would, in its opinion, maintain the dependants in a like degree of comfort as dependants of the same class residing in Canada.

The Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island Acts, in dealing with payment of compensation to workmen or dependants resident outside the province, make it clear that, on application, leave may be granted by the Board to any workman or dependant resident in the province at the time of the accident to reside outside the province without forfeiting the right to compensation payments under the Act.

The Alberta Act states that compensation is not payable to a workman after leaving the province unless permission to reside outside the province has been obtained from the Board. However, if, in the opinion of the Board, the workman's disability is likely to be permanent, and the Board so directs, the workman may be paid compensation while a resident outside the province, if he proves, in such manner as may be prescribed by the Board, his identity and the continuance of the disability.

A similar provision in the Ontario and Quebec Acts permits payment of compensation to a workman who ceases to reside in the province only if a medical referee or expert certifies that the workman's disability is likely to be permanent. The Acts provide for quarterly payments in such circumstances. Under the Saskatchewan Act, if a workman entitled to compensation leaves the province, compensation may be withheld or terminated, or, in the discretion of the Board, discontinued until the workman returns to the province and submits to medical examination.

CHAPTER XIV

Duties of Employers

For the purposes of each Act, every employer within its scope is required to keep accurate wage records in such detail as may be required. The records must be produced to the Board and its officers upon request. All the Acts except the Act of Manitoba stipulate that wage records are to be kept within the province.

As an example, the Nova Scotia Act lays down the following requirements with regard to the records to be kept by employers:

Section 118 (1) Every employer carrying on any industry to which this Part applies shall keep, —

(a) a timebook in which shall be entered:

- (i) the name of every workman employed;
- (ii) the date that each workman was first employed, and every day thereafter that he was employed;
- (iii) the rate of wages per hour, per day, per week, per month or per year that the workman is to be paid or is entitled to receive;
- (iv) the amount or value of any bonuses or other remuneration, if any, given or made by the employer, or to which the workman is entitled;

(b) a suitable book in which shall be entered:

- (i) the total number of days that each workman, employer, employer's partner or partners, or members of the employer's family were employed, or for which they are entitled to receive wages, bonuses or other remuneration;
 - (ii) the total amount of wages that each workman is entitled to receive for each period that he was employed, where the pay period was less than a month;
 - (iii) the total amount of bonuses or other remuneration, if any, the workman is entitled to;
 - (iv) the allowances made per day to every workman and his motor or team . . . and what the workman's wages would have been without the motor or team;
- (c) such books, records, or accounts as may be required to show a true record of the wages earned in the industry carried on by the employer;
- (d) such other books and records as the Board may from time to time require.

Employers' payroll records and returns are at all times subject to audit and investigation by the Board.

Failure to keep proper records renders an employer liable to a fine of up to \$500 in seven of the provinces, to a fine of up to \$50 in Prince Edward Island and to a fine of up to \$100 in Nova Scotia. In Alberta, no specific penalty is laid down for failure to keep records, but an employer who does not keep accurate records as required could be subject to a fine of not less than \$25

and not more than \$100 under the general penalty section of the Act.

The employer may also be fined for failure to permit examination of books and records or obstructing or hindering the making of an examination or inquiry. In British Columbia an employer who fails to produce proper payroll records for inspection, and in Nova Scotia and Prince Edward Island an employer who fails to keep or produce wage records, may be assessed upon the Board's estimate of the wages paid.

Every employer carrying on an industry under the Act is required to transmit to the Board on or before a prescribed date at the beginning of each year a certified statement of the amount of wages paid by him during the previous year, and an estimate of his payroll for the current year. Forms for this purpose are supplied by the Board.

The date prescribed for submission of the annual payroll statements varies from one province to another and is usually late in January or early in February. In Nova Scotia and Ontario, payroll returns must be filed by the last day of February.

An employer establishing a business to which the Act applies during the year must notify the Board immediately, submitting an estimate of his payroll for the remainder of the year.

Where an employer is engaged in more than one branch or class industry, the Board may require separate payroll statements to be made for each branch or class.

In the payroll statements submitted to the Board for the purposes of assessment salaries and wages are to be included only to the extent of the ceiling on earnings laid down in the Act. That is, the wages of any workman in excess of the ceiling are to be deducted from the amount of the payroll.

In arriving at the amount to be deducted, the workman's total earnings for the year or for the part of the year he has been employed must be taken.

The value of board and lodging, where supplied to a workman in lieu of wages, is to be included in the payroll statement. In some provinces the Board has fixed the daily or monthly amounts at which meals and lodging may be valued for this purpose.

On the basis of payroll returns, the Board assesses and collects from the employers in each class sufficient funds to pay for the accidents happening in the class during the current year, including the maintenance of adequate reserves for the payment of compensation in future years, and provision for administrative expenses.

Assessments are levied and collected at a provisional rate upon the estimate of payroll which the employer gives the Board, or, if he furnishes no estimate or if the Board deems his estimate too low, upon an estimate made by the Board. After the end of the year the rate is adjusted where the accident experience of the class or

group calls for it, and the final rate is applied to the actual payroll for the year.

For the purpose of assessment, each industry is regarded as a unit, and, except as expressly provided in the Board's rating provisions, its different operations are not to be segregated or separately rated. Where it is so provided, segregation is compulsory and the employer must keep separate payroll records for each type of work.

Default on the part of an employer in filing his payroll return renders him liable:

- (1) to be assessed on an arbitrary basis fixed by the Board;
- (2) to a penalty for delay in reporting;
- (3) to pay the full cost (or in some provinces a substantial part of the cost) of any accidents to his workmen while he is in default.

All the Acts provide that, if an employer does not submit his annual payroll statement (seven Acts stipulate "within the time prescribed"), the Board may base his assessment on its own estimate of the amount of his payroll and the employer is bound thereby.

As a penalty for delay in submitting his annual payroll statement, when due, the employer, under a number of the Acts, is required to pay an additional percentage upon the amount of his assessment. The additional payment that may be levied in Ontario is 5 per cent of the previous year's assessment, subject to a maximum of \$500 in any industry. In a number of the provinces the percentage rate increases with the period of default, as, for example, in Newfoundland, where the employer may be charged an additional 5 per cent of his assessment for the year with respect to which he is in default, and, if the default continues for more than one month, a further one per cent for each additional month of default.

Default on the part of the employer in making the required returns to the Board does not affect the payment of compensation to a workman for an accident that happens during the period of default, but, as indicated above, it renders the employer liable, unless excused by the Board, for payment of the full amount of compensation (or in two provinces for payment of half the compensation costs, subject to a monetary limit).

Under the British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan Acts, an employer who refuses or neglects to transmit to the Board a payroll return or other statement may be required to pay the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of an accident to a workman occurring during the time he is in default, and including, except in New Brunswick and Prince Edward Island, medical aid costs. The Newfoundland and Nova Scotia Acts stipulate that the sum payable by the employer may not exceed an amount which the Board considers just or reasonable under all the circumstances.

In Alberta, the defaulting employer is required to pay one-half of the compensation payable, subject to a maximum of \$300. In Manitoba, the employer is liable

to pay one-half of the accident cost, subject to a minimum of \$50 and a maximum of \$500.

Payment may be enforced in the same manner as the payment of an assessment. In all provinces the Board may relieve the employer from liability, if satisfied that the default was excusable.

Under most of the Acts, an additional percentage of assessment or interest, as fixed by the Board, may be charged where the payroll has been underestimated. Interest at a flat rate of 5 per cent is charged in Ontario and Quebec and interest at a flat rate of 2 per cent is charged in Saskatchewan on the difference between the provisional and adjusted assessments, where the estimate is less than half the actual payroll. In some provinces interest is charged where it is found, in adjusting an employer's assessment, that his actual payroll exceeds his estimated payroll by more than 20 per cent.

The British Columbia Act states that, where the ascertained payroll exceeds the estimated payroll, the Board may charge the employer interest on the amount of the deficiency. No interest rate is specified.

In Ontario and Saskatchewan, if an employer has been assessed on the basis of an incorrect statement, he is liable to pay the difference between the amount for which he was assessed and the proper assessment corresponding to his actual payroll and, in addition, a sum equal to the difference. The Board may, however, waive payment of the additional sum, if satisfied that the inaccuracy of the statement was not intentional.

Finally, employers are liable to prosecution for failure to furnish payroll returns or for furnishing false or misleading copies or reports of payrolls to the Board. For such non-compliance or such false statements an employer may on summary conviction be fined up to \$500 in seven provinces — British Columbia, Manitoba, Newfoundland, New Brunswick, Ontario, Quebec and Saskatchewan. A smaller fine or a penalty assessed by the Board may be imposed in New Brunswick, Nova Scotia and Prince Edward Island.

The Manitoba Act also makes it an offence punishable on summary conviction by a fine of up to \$500 for an employer "wilfully" to underestimate his probable payroll in his return to the Board.

Assessment notices are sent out by the Board after returns are received, showing each employer's assessment at the provisional rate set for his class or group for the current year and any adjustments in the assessment for the previous year.

The minimum annual assessment which may be levied in most provinces is \$10. The exceptions are Newfoundland and Prince Edward Island (where the minimum assessment is \$10 for resident employers and \$20 for non-resident employers), Alberta (where it is \$15) and Quebec (where it is \$20).

Assessments must be paid within a specified period after the date of mailing of the notice of assessment by the Board. In Quebec, for example, every current year's assessment is payable in one instalment. Except where the Commission orders otherwise, if an assessment is issued before July 31, it is payable within 60 days; if an assessment is issued after August 1, it must be paid within 30 days.

Failure to pay any assessment, a special assessment or any portion of an assessment by the due date may result in a penalty being imposed, by way of an additional percentage of the amount for which the employer is in default.

The added percentages payable as a penalty for delay in payment of assessments are as follows:

New Brunswick:	— 7% of the amount unpaid
Ontario:	— 5% of the amount unpaid. If default continues for more than one month after the due date, a further 2% for each additional two months' period
British Columbia:	— 5% of the amount unpaid and a further 1% for each additional month (after first month)
Saskatchewan:	— 2% of the amount unpaid and
Newfoundland:	a further 1% for each additional month (after first month)
Nova Scotia:	
Prince Edward Island:	
Alberta:	— 4% of the amount unpaid on the 15th day after the due date and 2% at the end of each three months thereafter
Manitoba:	— 2 1/2% of the amount unpaid for each half month, payable on the first and sixteenth days of the month, for the period of default.

In addition to any other penalty, the cost of an accident occurring during any period of delinquency may also be charged to the employer in British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan.

As with failure to furnish payroll returns, the employer must, if so ordered by the Board, pay the full amount or capitalized value, as determined by the Board, of the compensation payable, including, in most provinces, medical aid costs. In Alberta, the employer is liable to pay one-half of the compensation payable, not exceeding \$300, and in Prince Edward Island the employer may be required to pay as a penalty the sum of \$100 for each week during which payment is not made.

In addition to the above, an employer under the Quebec Act who fails to pay an assessment within one month after its due date and who continues to carry on an industry under Schedule 1 is guilty of an offence for which he may be fined not less than \$20 and not more than \$100 a day.

Where the Board is unable to collect the assessment owing, it enforces collection by legal means.

CONTRACTORS AND SUBCONTRACTORS— LIABILITY FOR ASSESSMENTS

In every province where work is done under contract for an employer carrying on an industry under the Act, the contractor or subcontractor is liable for payment of the assessments due to the Board in respect of the work, but the employer for whom the work is done (the principal) is held responsible for payment, should

the contractor or subcontractor default. The employer letting the contract must see, therefore, that the contractor has paid his assessment; otherwise, he can be held liable for payment.

To ensure that compensation is paid to workmen who might otherwise be deprived of it, most of the Acts stipulate that, until the assessment is paid by the contractor or subcontractor, the workmen of the contractor or subcontractor are deemed to be the workmen of the principal.

The Ontario, Quebec and Saskatchewan Acts set out the liability of employers and contractors in similar terms. These Acts state that the workmen of a contractor or subcontractor performing any work in or for the purposes of an industry under the Act carried on by the principal must be deemed to be the workmen of the principal unless the contractor or subcontractor is assessed as an employer under the Act.

Where, as a result of this liability, the principal has paid the assessment in respect of the work or the costs of compensation or medical aid, he is entitled to reimbursement from the contractor or subcontractor to such extent as the Board finds either would have been liable.

Further, under these Acts, a principal, whether under the Act or not, who lets a contract for work that is under the Act has a duty to see that the contractor or subcontractor pays his assessment. If he fails to do so, he is liable for payment. (In Quebec, he becomes jointly liable with the contractor or subcontractor for payment). The principal has a right to be indemnified by the person who should have made the payment and may withhold moneys owing to such person for the purpose.

The Acts make it plain that the above provisions are not to prevent a workman from claiming compensation or the Board from collecting contributions to the Accident Fund from the contractor or a subcontractor instead of the principal.

The other seven Acts (Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island) express the liability of employers and contractors in somewhat different terms than the Acts of Ontario, Quebec and Saskatchewan.

These statutes state that, where work under the Act¹ is undertaken for any person by a contractor, both the principal and the contractor are liable for payment of the assessment relating to the work and that the assessment may be collected from either, or partly from one and partly from the other, but, in the absence of any term in the contract to the contrary, the contractor is primarily liable for the assessments for the Accident Fund.

The same principle applies where work under the Act is performed under subcontract. The Alberta, Newfoundland, Nova Scotia and Prince Edward Island laws make all three parties (the principal, contractor and subcontractor) responsible, with the subcontractor being

¹The provisions of the Alberta Act refer to any work performed by a contractor for the principal, and are therefore wider in scope than those of the other Acts.

held primarily liable, in the absence of any term in the subcontract to the contrary.

The British Columbia, Manitoba and New Brunswick Acts place the liability on both the contractor and subcontractor and state (except for Manitoba) that the subcontractor is primarily liable for the assessments, in the absence of any term to the contrary in the subcontract.

Most of these laws (British Columbia, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island) also state that, in the Board's discretion, the workmen of a contractor or subcontractor who has not been assessed with respect to the work carried on by him (and in some of these provinces the contractor or subcontractor himself as well) may be considered by the Board to be the workmen of the principal, or, at the option of the Board, in Newfoundland, Nova Scotia and Prince Edward Island, the workmen of a subcontractor may be deemed to be the workmen of the contractor.

All the Acts except that of British Columbia provide for reimbursement of the principal for the amount for which he has been made responsible due to the contractor's or subcontractor's failure to pay the assessment in respect of the contracted or subcontracted work and, similarly, for recovery by the contractor from the subcontractor of the amount or part of the assessment paid by him with respect to the subcontractor and his workmen.

The Alberta Act authorizes the principal to withhold from any moneys payable to the contractor and to pay to the Board any amount for which the principal becomes liable. This payment is to be deemed a payment on the contract or subcontract or both, as the nature of the payment requires. In the same way a contractor may withhold from moneys payable to a subcontractor the

amount which he is liable to pay with respect to the subcontractor and pay such amount to the Board, the payment to be deemed a payment on the subcontract.

The Manitoba, Newfoundland, Nova Scotia and Prince Edward Island Acts refer to both actual and estimated liability and give the principal the right to withhold from moneys payable to the contractor (or the contractor to withhold from moneys payable to the subcontractor) such amount as the Board may estimate as the probable amount for which the principal (or contractor) is or may become liable.

Under the Manitoba Act, a principal, whether carrying on an industry under the Act or not, is liable, on summary conviction, to a fine not exceeding \$500 for failure to see that a contractor to whom he lets a contract files his payroll returns with the Board.

The Newfoundland and New Brunswick Acts provide that, where an employer is a contractor and sublets the whole or part of the work to a subcontractor, the Board may determine the percentage of assessment of each employer on the price agreed upon for the work done by him, instead of on his payroll. There is a somewhat similar provision in the Quebec Act.

The British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island Acts provide that, in the case of any work under Part I done under contract for a municipal corporation or public service commission (in the British Columbia and Manitoba Acts, a municipal corporation or a municipal board or commission only), any assessment due to the Workmen's Compensation Board in respect of the work may be paid by the corporation, board or commission, as the case may be, and the amount deducted from the moneys due the contractor.

CHAPTER XV

SYSTEM OF FINANCING WORKMEN'S COMPENSATION

To provide a fund for the payment of compensation and other costs (the Accident Fund), employers are assessed annually on the earnings of their employees.

For purposes of assessment, the industries within the collective liability system in each province are divided into classes, according to accident hazard.

The classification of industries under the Acts varies. The industries under Schedule 1 of the Ontario Act are divided into 27 classes. There are 27 classes under Schedule 1 of the Quebec Act, 16 under the Saskatchewan Act and 9 under the British Columbia Act. Nova Scotia has 8 classes, Newfoundland 7, New Brunswick 5 and Prince Edward Island 4. The industries subject to the Alberta Act are divided into 46 classes, of which 12 are self-insurers. In Manitoba, the general body of employers within the collective liability system forms one class, which is divided into a large number of groups. Five other classes in Manitoba are self-insurers.

Each class is comprised of a number of different industries and, as there are likely to be variations in the hazards and accident costs in the industries embraced in a class, the Board is empowered to subdivide a class into one or more subclasses or groups.

As an example, the classification under the Ontario Act, described in general terms, is as follows:

- Class 1 — lumbering, sawmilling
- Class 2 — pulp and paper
- Class 3 — manufacture of wood products and furniture
- Class 4 — planing mills, manufacture of wood products
- Class 5 — mining
- Class 6 — ceramics and stone
- Class 7 — rolling mills
- Class 8 — foundries, manufacture of cast metal products
- Class 9 — heavy machinery
- Class 10 — light machinery, manufacture of metal products
- Class 11 — automotive
- Class 12 — chemical
- Class 13 — milling, elevators and feed manufacturing
- Class 14 — abattoirs
- Class 15 — food products
- Class 16 — leather, rubber
- Class 17 — textiles
- Class 18 — clothing
- Class 19 — printing
- Class 20 — trucking, taxicab and stevedoring
- Class 21 — construction of roads, bridges, airports
- Class 22 — electric power or telephone systems
- Class 23 — construction of steel buildings and bridges
- Class 24 — building construction and related trades
- Class 25 — public services (hospitals, hotels, etc.)
- Class 26 — retail mercantile business
- Class 27 — farming

Each of the above classes contains one or more groups and rate numbers, all of which are numbered. In all, the employers subject to the Ontario Act are classified in a total of some 110 subclasses or groups.

The Board fixes the assessment rate appropriate for each class or group. The rates reflect directly the cost of accidents but certain other factors must be considered.

Assessment rates are expressed as so many dollars or cents for each \$100 of assessable payroll. Where, for

example, the assessment rate for the logging industry in Ontario is \$6 per \$100 of payroll, each employer in the industry is assessed 6 per cent of his payroll, exclusive of any individual earnings in excess of \$6,000 a year. The 1967 assessment rates in Ontario varied from a low of 15 cents to a high of \$14 per \$100 of payroll. In 1966 the average rate of assessment for all industries subject to the Ontario Act was \$1.22 per \$100 of payroll.

Each class is a self-sustaining unit on an annual basis and the Board is required to levy upon and collect from the employers in the class sufficient funds to pay for all accidents occurring in the class in that year, including funds to provide adequate reserves for the payment of pensions. Other factors taken into account in calculating a class or group rate include an estimate of the cost of unsettled claims at the year end, expenses of administration, accident prevention costs and provision for reserve funds and contingencies.

Separate accounts must be kept of all assessments received and all disbursements made for compensation, medical aid and other purposes in each class or group, so that it is, in effect, a mutual insurance association of the employers in the class or group. A disaster reserve is provided for the purpose of assisting any class that might otherwise be too heavily burdened in any year by reason of some abnormal loss or catastrophe.

Each subclass or group has a rate of assessment dependent upon its own accident cost experience.

Referring to the British Columbia Act, the Tysoe Report stated (p. 98):

The sub-classes are not intended to be self-sustaining each year; some groups at least are not large enough to attain that. If such were attempted, there would be severe fluctuations in assessment rates from year to year, and stability of rates is desirable. However, it is intended that over a period of time the costs and the assessments collected will balance within each sub-class, since the rates are set in each class on the basis of cost over a period of years.

In levying assessments each year to cover the cost of accidents occurring in that year, the Board must collect and set aside sufficient funds to take care of claims incurred and in process but not fully paid, and to provide reserves for the payment of pensions to dependants and to permanently disabled workmen, so that all pensioners may be assured of the ultimate payment of their claims in full.

The British Columbia Board has described² the method used in providing reserve funds, as follows:

A man injured in December, 1965, for example, may be disabled for six months in 1966. Therefore, at the end of 1965, money from the 1965 assessment must be "reserved" to cover the six months' payments to be made to him in 1966. Furthermore, he may

²Workmen's Compensation Board News Bulletin, June, 1966.

return to work but require treatment and compensation in 1967 or future years as a result of his December 1965 injury. . .

How does the WCB determine the amount of money required for this purpose? It is not possible to foretell the future costs of individual claims, because a claim may be re-opened at any time if further disability develops, and an unfinalled claim may continue for months or years, depending on the speed of recovery of the workman. In many cases, medical examinations cannot accurately determine how long a specific disability might continue. Therefore the estimate of the amount of money needed for this reserve is calculated by making a study of past experience.

The analysis of claims costs arising from accidents which occurred in 1962 illustrates the statistical method for determining the amount of money required for unfinalled claims.

For every \$100 paid in 1962 on 1962 claims, the Workmen's Compensation Board has paid —

\$58.18 in 1963
\$19.12 in 1964
\$ 8.54 in 1965

By an extension of this method, it can be seen that the Workmen's Compensation Board would be able to estimate how much is going to be paid in future years with respect to 1965 claims.

Awards made to widows, children and other dependants are payable in monthly instalments. A widow's pension is payable until remarriage or death. A pension to a child terminates at the age specified in the statute. An award to a workman with a permanent disability continues for his lifetime.

To ensure that adequate funds will be available for periodical payments in future years, the class of industry in which the accident occurred is assessed and pays a sufficient sum to set up "capitalized reserves". The term "capitalized reserves" means the amount of money, calculated by the use of actuarial tables, that, when invested in securities as authorized by the Act, together with the interest it earns, will be exactly sufficient to provide moneys for each dependant or pensioner for as long as needed. This sum is charged to the Accident Fund and set aside in the capitalized reserve fund at the time the award is made.

In British Columbia, as a result of the amendment in 1965 that tied pension payments to the cost of living (p.), additional funds must be added to the amounts set aside for pension awards to provide reserves for future increases in line with increases in the consumer price index.

RESERVE FUNDS

In all provinces the Board is required, by an annual assessment on the employers in each class, to collect sufficient funds to meet all claims payable during the year, including expenses incurred in the administration of the Act, and to provide a reserve fund (capitalized reserves) sufficient to guarantee future payments of compensation in respect of accidents happening in the class during the year.

In addition to these requirements, most Boards are empowered to make assessments to provide special funds to be set aside as reserves for a variety of purposes.

As indicated elsewhere in this study, several Boards are authorized to establish silicosis reserves for the payment of compensation in respect of silicosis.

The Alberta Board is authorized to maintain a rehabilitation reserve for the payment of the costs of rehabilitation of injured workmen.

Other Boards have authority to provide contingent funds for the purpose of assisting industries or classes that may become depleted or extinguished (British Columbia, New Brunswick and Nova Scotia); special funds for the relief of employers in any class who would otherwise be unduly burdened by an increase in the capitalization of periodical compensation payments payable in future years (Newfoundland, New Brunswick and Nova Scotia); and reserve funds for the equalizing of assessments (Alberta, New Brunswick and Nova Scotia).

Each Board has accumulated a "disaster reserve", under its authority to raise a special fund to be used to assist any class that sustains an abnormal number of costly accidents in any one year.

Most of the Boards have created Second Injury Funds for the purpose of paying part of the cost of claims of workmen suffering enhanced disabilities through having sustained a previous disability. These funds are discussed in detail below.

SECOND INJURY FUNDS

The Acts of Alberta, Manitoba, Newfoundland, Nova Scotia and Quebec expressly empower the Board to provide and maintain a Second Injury Fund (referred to as Enhanced Disabilities Reserve in Newfoundland and Alberta and Aggravation Fund in Quebec).

In British Columbia, the Disaster Reserve Fund is drawn upon in second injury cases. The latter fund is intended to meet the loss arising from any disaster or other circumstance which, in the opinion of the Board, would unfairly burden the employers in any class. The phrase "or other circumstance" has been considered by the Board wide enough to cover second-accident injuries. The Tysoe Commission (p. 199) recommended the enactment of a specific provision empowering the Board to set up a Second Injury Fund.

The New Brunswick and Ontario Boards have established Second Injury Funds under their authority to create a disaster reserve.

Second Injury Funds are designed to encourage employers to employ physically handicapped workers by removing an employer's fear of increased compensation costs as a result of an already handicapped worker suffering a subsequent injury on the job.

The 1952 Sloan Royal Commission Report (p. 176) described the function of a Second Injury Fund as follows:

The best illustration of how the Second Accident Fund is applied is the "eye cases". Assume a workman has an accident, as a result of which he becomes industrially blind in one eye. He is re-employed in another industry, and through another unfortunate accident loses the sight of his remaining eye. Instead

of assessing the class in which he was re-employed the full sum necessary to compensate him as a total disability, that class is charged as if the man had only lost an eye. The balance is charged to the Second Accident Fund. . .

The Second Accident Fund is created and maintained by assessment on all industries, and thus the cost of these cases is spread over all classes instead of being charged to one.

None of the provinces that have special provisions in their Acts for Second Injury Funds limits, as to type or cause, the pre-existing disability that, combined with the second injury, gives rise to the entire resulting disability.

The Alberta, Manitoba and Newfoundland Acts refer to "similar or other disabilities previously suffered". The exact wording of the Alberta provision is as follows:

Section 63 (1)

The Board shall from time to time assess and levy upon the employers in each of the classes and subclasses such percentage of the payroll. . . as . . . the Board may require. . .

(h) to provide and maintain a reserve for the payment of such part of the cost of claims of workmen suffering enhanced disabilities because of similar or other disabilities previously suffered as, in the opinion of the Board, is due to such previous disabilities.

The Quebec Act makes it clear that the previous disablement may be a congenital or organic disability or a disability caused by an employment injury.

Section 93 (3) of the Quebec Act states:

If a workman, handicapped as a result of a previous accident, a congenital infirmity or a pathological condition, is injured by reason of an accident arising out of or in the course of his work, the Commission may charge a part of the expenditure and compensation respecting such accident to a special fund.

Second Injury Funds, while benefiting employers by having the increased costs of a second accident taken care of by industry as a whole, also complement the work of physical and vocational rehabilitation agencies by promoting the employment of disabled workmen after they have been retrained.

COLLECTION OF UNPAID ASSESSMENTS

The Boards are given wide powers for the collection of unpaid assessments, which vary somewhat from province to province.

In all provinces, the Board may issue a certificate stating that an assessment has been made, that it is payable by the person named in the certificate and that a specified amount remains unpaid, and the certificate may be filed with the clerk or registrar of the appropriate court. When so filed, it becomes an order of the court and may be enforced as a judgment of the court.

In Alberta, British Columbia, Newfoundland, Nova Scotia, Prince Edward Island and Saskatchewan, where the Board has invoked this procedure but has been unable, under a writ of execution, to collect the full amount owing, it may, by application to a judge of the

appropriate court, obtain an injunction restraining the employer from carrying on business (in an industry within the scope of the Act) until all amounts due it are paid.

Further, under all the Acts except those of Manitoba and Saskatchewan, the Board has a lien on the employer's property in respect of unpaid assessments or any other sum which the employer is required to pay to the Board.

The Acts vary with respect to the extent to which the property of the employer is subject to a lien. The Alberta Act states that any amount due to the Board by an employer is a charge upon the property of the employer, including moneys payable to, for, or on account of the employer, within the province. In Quebec, the amount of any assessment or compensation for which an employer is liable "shall constitute a privileged claim on all the moveable and immovable property of such employer". In New Brunswick and Ontario, the Board has a lien upon all the property of the employer "used in or in connection with the industry" with respect to which the employer is assessed. In the other provinces (British Columbia, Newfoundland, Nova Scotia and Prince Edward Island) the Board has a lien for any indebtedness due it with respect to the property "used in or in connection with or produced in or by the industry" with respect to which the employer is assessed.

Several Acts (Alberta, Newfoundland, Nova Scotia and Prince Edward Island) provide that the Board has a lien against any real estate of the employer only if and when a certified copy of the assessment is lodged in the land titles office (Registry of Deeds) for the district in which the real estate is situated.

A lien in favour of the Board has priority over all other debts, liens, charges or mortgages except a lien for wages in Alberta and British Columbia. It ranks immediately after law costs without registration in Quebec, is subject only to municipal taxes in New Brunswick and Ontario, and is subject only to municipal taxes or a lien for wages in Newfoundland, Nova Scotia and Prince Edward Island.

In Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island, the Board has a right of action against a defaulting employer in respect of the amount of assessment unpaid, together with costs of the action.

Another remedy available in Alberta, Ontario and Saskatchewan is the collection of unpaid assessments by the municipality. If an assessment remains unpaid for 30 days, the Board may file its certificate, with the clerk of the municipality in which the establishment of the defaulting employer is situated. The amount owing, as stated in the certificate, is entered upon the tax collector's roll and collected as taxes. The collector may add five per cent to the amount to be collected and retain such percentage for his services.

The Alberta Act also makes provision for collection of an assessment, with costs, by the filing of a distress warrant directing the sheriff to seize and sell by public auction the goods and chattels of the person in default.

In seven provinces (all except Alberta, British Columbia and Quebec), the laws provide that, where any work or service is performed by an employer in an industry under the Act for which he would be entitled to a lien under the Mechanics' Lien Act, the owner of the property must see that the employer pays the assessment and, if he fails to do so, is personally liable to pay it (or, in Manitoba, is liable, on summary conviction, to a fine of \$50, if he fails to see that the employer files the necessary statements with the Board).

In case of the death of the employer or of an assignment or winding-up of a company, assessments are

ranked as preferred claims. Under all the Acts except those of British Columbia and Quebec, assessments are to be included among the debts which, under the provincial statutes governing the distribution of an estate or the assets of a company in such cases, have priority over other claims against the property of the employer. In Saskatchewan, priority in respect of any individual claim for compensation may not exceed \$500.

The federal Bankruptcy Act also stipulates that all wages earned during the three months preceding a bankruptcy and any indebtedness under a provincial Workmen's Compensation Act shall be preferred claims.

CHAPTER XVI

International Labour Conventions and Recommendations

As part of its work of setting acceptable international labour standards for adoption by member countries, the International Labour Organization has approved a number of International Labour Conventions and Recommendations in the field of workmen's compensation. The Conventions may be adopted by member states through ratification, which represents a national commitment to comply with the standards laid down in the Convention. The Recommendations set forth more detailed provisions for the guidance of governments and do not require ratification.

PRE-WAR CONVENTIONS AND RECOMMENDATIONS

The first workmen's compensation Convention to be adopted by the International Labour Conference was the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12). This Convention, without specifying the nature of the benefits to be granted, provided for the extension of workmen's compensation legislation to all farm workers.

At its 1925 Session the Conference adopted three Conventions and four Recommendations dealing with workmen's compensation.

The main Convention of this group, the Workmen's Compensation (Accidents) Convention (No. 17), reflected new concepts of workmen's compensation that had begun to find acceptance. One of these was the change in coverage from protection of manual workers only or of certain undertakings involving a high degree of risk to coverage of all workers. The Convention required workmen's compensation laws and regulations to apply to "workmen, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private." At the same time it permitted the customary exclusions of casual workers, outworkers (that is, homeworkers) and family workers and also non-manual workers whose remuneration exceeded a limit to be determined by national legislation.

The Convention provided for medical care and for cash benefits in case of permanent disability or death. It did not specify any standard as to benefit amounts. Minimum levels of benefit, however, were set forth in the accompanying Recommendation (No. 22).

No requirement was laid down regarding the payment of benefits in respect of temporary disability other than a requirement that the waiting period should not exceed five days. The Convention stated that "In case of incapacity, compensation shall be paid not later than as from the fifth day after the accident."

Convention No. 17 specified that benefits in fatal and permanent disability cases should be in the form of

periodical payments, except where the competent authorities were satisfied that a lump sum would be properly used. Additional benefits were to be provided where the workman required the constant help of another person.

An injured workman was entitled to medical, surgical and pharmaceutical aid and to the supply and normal renewal of artificial limbs and surgical appliances, or to an equivalent money payment.

Each country was left free to determine whether compensation should be payable directly by the employer or by an accident or sickness insurance institution.

The Workmen's Compensation (Minimum Scale) Recommendation (No. 22) proposed minimum levels of benefit for temporary total and permanent total disability "equivalent to two-thirds of the workman's annual earnings" and for temporary and permanent partial disability a proportionate amount corresponding to the reduction in earning power.

The yearly total of periodical payments to all dependants in fatal cases was not to exceed two-thirds of the deceased workman's annual earnings or, in case of lump-sum payments, the pension's capitalized value.

The Recommendation cited the categories of persons that should be regarded as dependants for purposes of compensation. These should include at least the consort, children under 18 and invalid children over that age, dependent parents and grandparents.

The Recommendation also provided for the "vocational re-education" of the injured workman.

The Workmen's Compensation (Occupational Diseases) Convention (No. 18) contained a schedule of diseases and, corresponding to each disease, certain industries and processes involving exposure to a specified poison or noxious substance. Such a disease, if contracted by a person engaged in such occupation or employment, is presumed to be of occupational origin and gives rise to compensation. The schedule provided for two types of poisoning (lead and mercury) and one infectious disease (anthrax).

This Convention was revised in 1934 (No. 42) to cover additional diseases — silicosis, four more types of poisoning, radiation disability and skin cancer. The right-hand column of the schedule was expressed in broader terms to include "any process" involving exposure to the risk concerned.

A Recommendation adopted at the 1925 Conference, the Workmen's Compensation (Occupational Diseases) Recommendation (No. 24), proposed that each state should adopt a simple procedure in its national legislation for revising the list of occupational diseases.

Also adopted at the 1925 Conference were a Convention (No. 19) and a Recommendation (No. 25) providing for equality of treatment of nationals and

non-nationals as regards workmen's compensation, an important step for the protection of migrant workers who move from one country to another. The Recommendation was designed to facilitate the payment of compensation to workers or their dependants in foreign countries. In addition, a Recommendation (No. 23) relating to jurisdiction in disputes concerning workmen's compensation was adopted.

POST-WAR CONVENTION CONCERNING SOCIAL SECURITY

In 1952 the Conference dealt with workmen's compensation in a Convention dealing with the whole field of social security, the Social Security (Minimum Standards) Convention (No. 102).

This Convention, which reflected new thinking and experience of member states, set minimum standards of benefit to be granted under national legislation in respect of each of nine branches of social security, one of which (Part VI) was employment injury benefit.

A country ratifying the Convention undertakes to comply with the standards laid down in at least three of the nine branches (including at least one of the branches dealing with unemployment, old age, employment injury, invalidity and survivors' benefits).

The Convention, which was aimed at the development of a comprehensive social security system rather than particularly high standards in any one area, did not go as far as Convention No. 17 in respect of the persons to be protected by employment injury legislation. It provides that the legislation must protect prescribed classes of employees, constituting not less than 50 per cent of all employees, and, for benefits in case of the death of the workman, also their wives and children. It does not provide for payment of death benefits to dependants other than widows and children. In the case of a widow, the right to benefit may be made conditional on her being presumed to be incapable of self-support.

Benefits to be provided include medical care and cash benefits for temporary disability, permanent disability and death. These benefits are supplemented by provisions aimed at the injured workman's rehabilitation and re-establishment in suitable work.

The Convention enumerates the various types of medical care that must be made available, and provides that these services must be afforded "with a view to maintaining, restoring or improving the health of the person protected and his ability to work and to attend to his personal needs". National agencies administering medical care are required to co-operate with the general vocational rehabilitation services, with a view to the re-establishment of handicapped persons in suitable employment.

To be eligible for benefits, a covered employee is merely required to have been in employment when the accident occurred or the disease was contracted. Benefits must be granted throughout the contingency. In respect of incapacity for work, a waiting period of not more than three days is permitted.

One of the new features of the Convention was that it prescribed minimum levels of benefit amounts. Owing

to the different systems of social security in effect in various member countries, the Conference laid down alternative formulas for testing the adequacy of the benefits provided under national legislation. One of these is applicable where benefits are related to the workman's previous earnings; the other is applicable where benefits are payable at uniform flat rates (without reference to previous earnings).

In laying down a minimum standard to be complied with, the Conference considered it necessary to relate benefits to prevailing earnings in employment that could be considered as representative. Where benefits were related to the injured or deceased workman's past earnings, the wage level considered typical, and therefore used as a basis of comparison, was the standard wage for skilled labour (the wages paid to a skilled manual male employee). Where benefits at flat rates were paid, the wage level selected as a basis of comparison was the standard wage for unskilled workers (the wages paid to an ordinary adult male labourer).

The Conference also took into account the workman's family status. The minimum rate of benefit is fixed for a "standard beneficiary" — a man with a wife and two children in cases of temporary and permanent disability, and a widow with two children in case of the death of the injured workman.

The formulas laid down in the Convention are as follows: where benefits provided under a national scheme are related to previous earnings, the level of benefits for a man with a wife and two children, increased by the amount of any family allowances payable, must be at least 50 per cent of the total of the workman's previous earnings and of the amount of any family allowances payable to a person protected with the same family responsibilities; if a maximum is prescribed, it may not be less than 50 per cent of the wage of a skilled manual male employee. Where benefits are paid at a uniform rate, the periodical payments and any family allowances payable may not be less than 50 per cent of the total wages of an ordinary adult male labourer, plus family allowances.

In the case of a widow with two children, the same alternative formulas apply but the percentage stipulated is 40, instead of 50, as above.

In both cases the benefit for other beneficiaries must bear a reasonable relation to that of the "standard beneficiary".

In order to provide for adjustment of benefits to take account of any depreciation of their value, rates of benefits are to be reviewed, if there are substantial changes in the general level of earnings as a result of substantial changes in the cost of living.

CONVENTION 121

At its 1964 Session the Conference adopted a Convention (No. 121) and supplementary Recommendation (No. 121) concerning benefits in the case of employment injury.

These two instruments are a revision and updating of four earlier Conventions described above — Nos. 12,

17, 18 and 42. In framing new international standards, the Conference wished to take account of new approaches that had evolved since the war and to adopt a Convention flexible enough to permit ratification by countries with varying social security schemes and in varying stages of development. The new instruments cover benefits in case of employment accidents and in case of occupational diseases.

Convention No. 121 follows closely the corresponding provisions of the Social Security (Minimum Standards) Convention, 1952 (No. 102) but provides for a standard of benefits that is generally higher than that required by Convention No. 102.

The intent of Convention No. 121 is that the workmen's compensation legislation of a ratifying country should protect practically all workers. It states specifically that the national law must cover "all employees, including apprentices, in the public and private sectors, including co-operatives."

As in the earlier Convention (No. 17), casual workers, outworkers, and family workers who are working for the employer and living in his house may be excluded.

Other classes of employees may be exempted from workmen's compensation coverage, so long as they do not constitute more than 10 per cent of all employees, not including the three classes specified above.

Each ratifying country must prescribe a definition of "industrial accident", including the conditions under which a commuting accident is considered to be an industrial accident, and must specify the terms of this definition in its reports on the application of the Convention.

As regards occupational diseases, each country is required to (1) adopt a schedule of diseases comprising at least those enumerated in the Convention, or (2) include in its law a general definition of occupational diseases broad enough to cover at least the diseases listed in the Convention, or (3) prescribe a list, supplemented by a general definition or by other provisions for establishing the occupational origin of diseases that do not appear in the schedule.

Eligibility for benefits may not be made conditional on length of employment, duration of insurance or payment of contributions. The only qualifying requirement is that the worker must have worked in covered employment. A period of exposure may be prescribed for occupational diseases.

Benefits must be granted throughout the contingency. A waiting period not in excess of three days is permitted, however, if provided for in the legislation of a ratifying country when the Convention goes into force, and if the country, in reporting on the application of the Convention, states that its reason for requiring a waiting period subsists.

Medical care and allied benefits to be provided must comprise: (a) general practitioner and specialist in-patient and out-patient care, including visits at the patient's home; (b) dental care; (c) nursing care at home or in hospital or other medical institutions; (d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions; (e) dental, pharmaceutical

and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses; and (f) care furnished by members of such other professions as may at any time be legally recognized as allied to the medical profession, under the supervision of a medical or dental practitioner.

Wherever possible, emergency treatment of persons sustaining a serious accident and follow-up treatment of those whose injury is slight and does not entail discontinuance of work must be provided at the place of work.

The Convention provides that the cash benefits payable for permanent total disability or a substantial permanent partial disability must as a general rule be in the form of a periodical payment. In exceptional circumstances and with the agreement of the injured person, a lump sum corresponding to the actuarial equivalent of a pension may be paid, if the competent authority believes that it would be particularly advantageous to the injured workman.

A lump-sum payment may be made in case of a permanent partial disability which is not substantial but which is in excess of a prescribed degree. It is thus left to each government to determine the dividing line below which a lump-sum payment is permissible. Lump-sum payments are not contemplated with respect to death benefits.

Benefits for permanent disability are to be payable in all cases from the time when compensation for temporary incapacity ceases.

Compensation for a substantial permanent partial disability in excess of a prescribed degree is to be a suitable proportion of that payable for total disability.

Death benefits are to be paid to a widow, subject to such conditions as may be laid down by national laws and regulations, to a disabled and dependent widower, to dependent children, and to such other dependants as may be specified in the law.

The age limit fixed for payment of benefits to dependent children is the school-leaving age or 15 years, whichever is higher. The term "dependent child" also covers children under a higher age, to be prescribed by laws or regulations, who are students, apprentices or invalids incapable of gainful employment.

The Convention requires a funeral benefit to be provided at a rate, determined by each country, which is not less than the normal cost of a funeral. The right to funeral benefit may be made subject to prescribed conditions, however, where cash benefits to survivors are substantially in excess of those required by the Convention.

Additional benefits must be provided for disabled workmen who require constant care and attendance.

Convention No. 121 uses the same criteria as are used in Convention No. 102 to measure adequacy of benefits, but the percentage rates specified are higher — 60 and 50 per cent, instead of 50 and 40 per cent.

To satisfy the Convention, periodical payments must comply with one or the other of two standards, depending on whether the benefits granted under national legislation are related to the workman's past

earnings or are payable at uniform flat rates. In the former case, the rate of benefit must represent a certain proportion of the previous earnings; in the latter case, the rate of benefit must never be less than a certain minimum, by comparison with the wage of an unskilled worker.

If the benefits are related to the workman's past earnings, the rate of the benefit payable to a man with a wife and two children, increased by any family allowances payable, must be at least 60 per cent of the workman's previous earnings, plus the amount of any family allowances payable, and, if a maximum limit is prescribed, it may not be less than 60 per cent of the wage of a skilled manual male employee.

If flat-rate benefits are paid, the rate of benefit payable to a man with a wife and two children, together with family allowances, must be at least 60 per cent of the wage of an ordinary adult male labourer, plus family allowances.

The adequacy of the periodical payment in case of death is to be measured by one or the other of the two methods outlined above, but the percentage to be attained with respect to a widow with two children is fixed at 50, rather than 60.

No periodical payment may be less than a prescribed minimum amount.

The Convention also requires current rates of benefits to be reviewed following substantial changes in the general level of earnings, where these result from substantial changes in the cost of living. Findings of such reviews and any action taken are to be included in periodical reports on the application of the Convention.

Each ratifying country must, under prescribed conditions, take measures to prevent industrial accidents and occupational diseases and to provide rehabilitation and re-employment services for injured persons. As far as possible, it must furnish information concerning the frequency and severity of industrial accidents in its reports on the Convention.

The Convention further requires each ratifying country to give to non-nationals within its territory equality of treatment with its own nationals as regards employment injury benefits.

RECOMMENDATION No. 121

The Employment Injury Benefits Recommendation (No. 121) proposes that member countries of the I.L.O. should extend the application of their workmen's compensation legislation, if necessary by stages, to any categories of workers which may have been exempted from coverage, as permitted by Convention No. 121.

The Recommendation also provides for the protection of self-employed persons and other categories of persons not having the status of employees, but does not propose that the benefits to be provided for such groups must be as favourable as those required by the Convention.

Specifically, it suggests that employment injury or analogous benefits should be provided, if necessary by stages and/or through voluntary insurance, for members

of co-operatives engaged in the production of goods or the provision of services; prescribed categories of self-employed persons, including operators of small businesses or farms; prisoners doing work which has been required or approved by the competent authorities; and certain categories of persons working without pay, including trainees and persons volunteering their services for public office, police and rescue work, social service or hospitals.

The Recommendation would broaden the scope of the term "industrial accident" to include accidents occurring on the direct way between the workplace and the worker's home, or the place where he usually takes his meals or the place where he receives his pay. It would also regard as employment injuries any accidents, regardless of their cause, sustained during working hours at or near the workplace or at any place where the worker would not have been except for his employment.

Provision is also made for recognition of a wider range of diseases as diseases of occupational origin.

The Recommendation does not provide for a waiting period.

It suggests that disability benefits should be not less than two-thirds of the injured person's earnings, subject to a ceiling on the rate of benefit or on earnings, if such is provided for. In this provision the Recommendation does not go beyond the standard set in 1925.

The Recommendation would confine the payment of lump-sum benefits to cases in which permanent impairment of earning capacity is less than 25 per cent. A lump sum should bear an equitable relationship to periodical payments, and should not be less than the periodical payments which would be due in respect of a period of three years.

In case of helplessness, the "reasonable cost" of providing the constant help or attendance of another person should be paid.

It is further provided that, where an employment injury entails unemployability or disfigurement and this is not fully taken into account in the evaluation of the loss sustained by the injured person, additional benefits should be granted.

The Recommendation proposes that, where periodical payments to widow and children are less than the maximum amounts prescribed, parents, brothers, sisters and grandchildren should receive benefits, if they were dependent on the deceased workman for support.

Where a maximum limit on the total benefits payable to all dependants is prescribed, such maximum should be not less than the benefits payable to a totally disabled workman.

Finally, the Recommendation states that benefit rates should be adjusted periodically to take account of changes in the general level of earnings or the cost of living.

EQUALITY OF TREATMENT CONVENTION

In 1962 the Conference adopted a new Convention, the Equality of Treatment (Social Security) Convention (No. 118), which was designed to give workers employed in a foreign country protection equal to that enjoyed by the citizens of that country under its national social security system.

The Convention applies to the same nine branches of social security as are dealt with in the Social Security (Minimum Standards) Convention (No. 102). A country's ratification may apply to one or more branches. Other branches may subsequently be added to those initially specified.

In respect of employment injury benefits, as in respect of other social security benefits, the Convention provides that, subject to reciprocal arrangements, a country which has ratified the Convention must grant within its territory to the nationals of any other ratifying country equality of treatment under its legislation with its own nationals, both as to coverage and as to the right to benefits.

Equal treatment is to be accorded without any conditions as to residence, unless the legislation of the other country concerned makes the grant of employment injury benefits conditional on residence in its territory.

Subject to measures being taken to give effect to the obligations of the Convention through agreements between member states, each country which has ratified the Convention in respect of employment injury benefits must guarantee, both to its own nationals and to the nationals of another country which has ratified the Convention in respect of employment injury benefits, payment of employment injury pensions to beneficiaries when they are resident abroad.

EXTENT OF COMPLIANCE OF CANADIAN LAWS WITH CONVENTION No. 121

The above account traces the development of international standards in the field of workmen's compensation, culminating in the adoption of a Convention and a Recommendation in 1964.

The earliest instruments indicated the necessity for protection of workers against loss of earnings due to employment injury and laid down minimum standards of protection. New concepts of social security were adopted by the I.L.O. during and after the Second World War.

When compared with the pre-war Conventions, the 1964 Convention (No. 121) represents a decided advance. It provides for a wider range of benefits, recognizes the need for an integrated system of workmen's compensation, including accident prevention and rehabilitation and re-employment services, and contains criteria for determining the adequacy of the benefits provided under national compensation laws.

In order to avoid a too rigid requirement in the matter of coverage, the Convention permits ratification

so long as the number of workers covered constitutes not less than 90 per cent of all employees (not counting casual workers, outworkers and family workers).

The Convention was drafted to cover broad general principles, without unnecessary detail, with a view to achieving maximum flexibility and wide ratification.

While the earlier Conventions are still open to ratification, the most recent Convention is the one which it would now be appropriate for a country at Canada's present stage of development to ratify. The question arises as to how close Canadian workmen's compensation laws come to compliance with the Convention.

The Department of Justice has given the opinion that the subject matter of the Convention is partly within federal legislative jurisdiction and partly within provincial legislative jurisdiction. Thus, both federal and provincial workmen's compensation laws must meet the requirements of the Convention in order to permit ratification.

In general, Canadian legislation, both federal and provincial, provides for a system of workmen's compensation that incorporates the standards laid down in the Convention.

There are, however, a number of matters on which legislative changes would appear to be necessary, at least in some provinces, in order to bring about conformity with the Convention. Further, compliance in the matter of coverage and the minimum level of benefits would need to be measured statistically. As regards coverage, it would be necessary to determine on a national basis whether the total number of workers not covered by workmen's compensation laws was within the limit of 10 per cent of all employees (excluding casual workers, outworkers and family workers) specified by the Convention.

The Convention contemplates coverage of all workers, including apprentices, farm workers and seafarers, as well as public service employees, permitting exemptions only to the extent of 10 per cent of the labour force.

With respect to Canada as a whole, farm workers are not compulsorily covered, except in Ontario; domestic workers are not covered in any jurisdiction; and employees of financial, insurance and professional undertakings are generally outside the scope of the law. Also usually excepted are workers employed by non-profit religious, charitable, social or fraternal organizations. Workers in certain service industries, such as barber shops, beauty parlours and undertaking establishments, are excluded in most provinces. The Acts of four provinces do not apply to small workplaces in industries within the Act. In Quebec, while a plan to provide almost complete coverage in the five-year period beginning October 1, 1967, has been announced, many categories of employees will not be protected for several years. Workers in wholesale and retail stores, for example, are among the employees at present excepted. These will be brought within the scope of the Act from October 1, 1970. The above indicates that a considerable number of Canadian workers are not covered by workmen's compensation legislation.

The adequacy of levels of benefit under Canadian laws would probably be determined with reference to Section 20 of the Convention, which sets out one of the two alternative standards that may be applied.

The requirement set out in Section 20, with which Canadian laws would have to comply, is that the benefit payable to a disabled workman with a wife and two children, plus family allowances, must be at least 60 per cent of the wage of an ordinary adult male labourer, plus family allowances, and the periodical payment to a widow with two children, plus family allowances, must be at least 50 per cent of the wage of an ordinary adult male labourer, plus family allowances. To find out if Canadian laws meet the above standard, it would be necessary to determine the amount of the wage of the "ordinary adult male labourer" in the Canadian context and to make the required calculations.

All the Canadian laws prescribe a definition of "industrial accident" but do not make specific reference in the definitions to the conditions under which a commuting accident is compensable, as required by the Convention.

As regards occupational diseases, most jurisdictions appear to be in line with the Convention. Most provinces have a combined system, whereby automatic coverage is provided for diseases listed in a schedule and authority is given to the Board to recognize any non-listed disease as an occupational disease when proof is given of its occupational origin. In the latter case it is incumbent upon a workman claiming compensation to establish that the disease was work-connected. Because of the combined system, it would appear that the diseases specified in the Convention are compensable in practically all jurisdictions.

The New Brunswick and Nova Scotia Acts are out of line with the Convention in that they provide for a

waiting period of four days. Federal government employees employed in these provinces are also subject to the four-day waiting period. The Convention specifies a waiting period not exceeding three days.

Free medical aid is provided for in all jurisdictions but not all the medical care and allied benefits specified in the Convention are expressly provided for in each provincial law. As an example, only six provinces authorize treatment by members of professions legally recognized as allied to the medical profession, and only three provinces provide for a helplessness allowance for a totally disabled workman.

Except in British Columbia, there is no requirement in the Canadian laws that rates of benefits must be reviewed following "substantial" changes in the general level of earnings, resulting from "substantial" changes in the cost of living.

In two provinces regular reviews of the Act are required by law (in Saskatchewan, every four years; and in Newfoundland, at least once every five years). The Alberta Act is periodically reviewed by a committee of the Legislature, usually every four years. In four other provinces Royal Commissions have been appointed to inquire into the Act and its administration. As indicated, with the exception of British Columbia, where pension payments are tied to the consumer price index, the Acts make no provision for revision of benefits to take account of increases in living costs. In practice, however, benefits are raised by the legislatures in response to public demand when current benefits appear to be out of line with the cost of living.

As required by the I.L.O. Constitution, the Convention has been referred to each province "for the enactment of legislation or other action" and consultations between federal and provincial authorities are contemplated with a view to possible ratification.

APPENDIX I

Industrial Diseases Compensated by Provinces (Scheduled Diseases)

The following table shows the industrial diseases contained in the schedules to the various provincial Workmen's Compensation Acts. Any disease named in a schedule, if contracted in an occupation associated with that disease in the schedule, is recognized as an industrial disease and is compensable.

There is no schedule of diseases in the Manitoba Act. Compensation is payable for any disease that is peculiar to or characteristic of an industrial process, trade or occupation to which Part I of the Act applies, and it is left to the Board to decide in each individual case whether a disease for which compensation is claimed is peculiar to or characteristic of a particular industrial process, trade or occupation.

In most provinces a disease which is not included in the schedule may be compensable, in the discretion of the Board, if it can be shown to be due to the nature of the workman's employment. For details of coverage of non-scheduled diseases, see "Industrial Diseases" at page 33.

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Aero-otitis media	Any process in which rapid alteration in atmospheric pressure is encountered	British Columbia
Ammonia poisoning	Any process involving the use of ammonia or its preparations or compounds	New Brunswick, Prince Edward Island, Saskatchewan
Ankylostomiasis	Mining	British Columbia, Newfoundland, Nova Scotia, Saskatchewan
Anthrax	Handling of wool, hair, bristles, hides and skins	All provinces ²
Arsenic poisoning	Any process involving the use of arsenic or its preparations or compounds	All provinces
Asbestosis	Any industry or process where there is exposure to asbestos fibre	British Columbia; Alberta, Quebec (included under pneumoconiosis)
Asthma and respiratory irritation	Any process where there is direct exposure to organic or fibrous dusts, as in handling grain, furs, feathers, cedar, mahogany, wool, rock-wool, asbestos or wood	British Columbia
Benzol poisoning	Any process involving the use of benzol	Newfoundland
— including poisoning by its nitro- and amino-derivatives or homologues	Any process involving handling or use (in Ontario, Quebec and Saskatchewan, also any process involved in their manufacture)	Alberta, British Columbia, Ontario, Quebec, Saskatchewan

¹In the column below a general description, rather than the exact wording used in the schedule, is given in some cases.

²All provinces except Manitoba.

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Beryllium poisoning	Any process involving the use of beryllium or its preparations or compounds	Ontario
Beta haemolytic streptococcal infections (throat or skin infections)	Work involving care of infected patients or the preparation and study of cultures	Saskatchewan
Bovine tuberculosis	Care or handling of animals; handling of animal carcasses; laboratory work in connection with the disease	Saskatchewan
Brass, zinc or nickel poisoning	Any process involving the use of nickel or brass or melting or smelting of zinc	Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan
Bronchitis and pulmonary oedema	Any process or industry using oxyacetylene or electric arc for cutting or welding	British Columbia
Brucellosis (see Undulant fever)		
Bursitis (see also Cellulitis)	Any process involving continuous rubbing, pressure or vibration of the parts affected	Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
— (acute) over the elbow (beat elbow)	Any occupation or industry where there is repeated pressure on the elbow	British Columbia, New Brunswick
— miner's beat elbow	Mining	Newfoundland, Nova Scotia
— prepatellar (beat knee)	Any process or industry in which injury is caused by frequent kneeling	British Columbia, New Brunswick
Cadmium poisoning	Any process involving the use of cadmium or its preparations or compounds	Ontario, Quebec, Saskatchewan
Caisson disease (see Compressed air illness)		
Cancer	Manufacture, handling or use of pitch or tar	Newfoundland
Cancer, epitheliomatous, or ulceration of the skin (in Ontario and Saskatchewan, or of the corneal surface of the eye)	Handling or use of tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue	Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Carcinoma or malignant disease arising from radiation (see Radiation diseases)	Any employment involving exposure to radiation, X-rays or radioactive materials or substances	Newfoundland

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Carbon bisulphide poisoning	Any process involving the use of carbon bisulphide or its preparations or compounds	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Saskatchewan
Carbon dioxide poisoning	Any process involving the evolution of carbon dioxide or the use of carbonic acid gas	Newfoundland, New Brunswick, Ontario, Saskatchewan
Carbon monoxide poisoning	Any process involving exposure to carbon monoxide or involving the evolution of carbon monoxide	British Columbia, Newfoundland, Nova Scotia, New Brunswick, Ontario, Quebec, Saskatchewan
Cellulitis		
— subcutaneous, of the hand (beat hand)	Mining or any other industry or occupation which requires continued use of hand tools or where there is repeated pressure on the hand	Alberta, British Columbia
— miner's beat hand	Mining	Newfoundland, Nova Scotia
— subcutaneous, over the patella (beat knee)	Any process or industry in which injury is caused by frequent kneeling	British Columbia
— miner's beat knee	Mining	Newfoundland, Nova Scotia
Chlorinated hydrocarbons (Saskatchewan — halogenated hydrocarbons) (carbon tetrachloride and others), poisoning by	Any process in the manufacture or involving the use of these substances	British Columbia, Ontario, Quebec, Saskatchewan
Chlorine poisoning	Any process involving the use or evolution of chlorine gas	Saskatchewan
Chrome poisoning	Any process involving the use of chromium or its compounds	Newfoundland, Ontario, Quebec, Saskatchewan
Chromium and its compounds, dermatitis caused by	Any process involving exposure to chromium or its compounds	British Columbia
Circulatory disturbances of the extremities	Any process involving muscular effort at low temperatures or handling cold materials	British Columbia
Coal miners' pneumoconiosis (see Pneumoconiosis)		
Compressed air illness	Any process carried on in compressed air	British Columbia, Newfoundland, New Brunswick, Ontario, Quebec, Saskatchewan

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Conjunctivitis	Any process involving exposure to dust from spices, or to dust, heat, gases, fumes, vapours, mists or smoke	British Columbia
Conjunctivitis and/or retinitis	Any process or industry using oxyacetylene gas or electric arc for cutting or welding	British Columbia, Newfoundland, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan
Cyanide poisoning	Any process involving the use or handling of hydrogen cyanide or cyanide compounds	Saskatchewan
Cyanide, dermatitis caused by	Any process involving the use or handling of cyanide	British Columbia
Deafness (see Occupational deafness and Traumatic deafness)		
Dermatitis	No process listed	Quebec
Dermatitis venenata	Any process involving the use or handling of acids and oils or other irritants capable of causing it	Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan
Dermatitis and infection or inflammation of the skin or contact surfaces	Any process involving the use or handling of oils, cutting compounds or lubricants or contact with dust, liquids, fumes, gases or vapours	Alberta
Dermatitis	Any process involving contact with chemicals such as acids, alkalis or salts, solvents, disinfectants, asphalt, creosote, coal-tar products, wood preservatives, sugar, soap, glue, cement, lime, sulphur, sulphur gases, cutting oils or petroleum products, woods or wood dusts, poison ivy, poison oak, ragweed or other plant life poisonous to human beings, hides, uncooked meats, fish or poultry, cloth, jute, hemp, dirty linen, rags or sacks, spices or essential oils; in any process in manufacturing or handling cheese or cereals; in picking, packing or canning of fruits or vegetables; in handling copra; in manufacture or use of rock-wool, slag-wool, glass-wool, silica or silicates; in manufacturing brooms or brushes; in any process using dyes, inks, or pigments; in any process using thio-glycolates or other irritant substances in hairdressing; in any process where there is exposure to rubber, leather, plastics, paper, or dust	British Columbia

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Dermatitis (Continued)	from any of them; or from any allergic reaction to drugs such as penicillin, streptomycin and metaphen	
Epitheliomatous Cancer (see Cancer)		
Formaldehyde poisoning	Any process involving the use or handling of formaldehyde or its preparations	British Columbia, Saskatchewan
Frostbite ³	Any outdoor work (in Newfoundland — any process)	Newfoundland, Nova Scotia, Prince Edward Island
Gastric irritation	Any process or industry using oxyacetylene gas or electric arc for cutting or welding	British Columbia
Glanders	Care of equine animals; handling carcasses of such animals	Alberta, New Brunswick, Saskatchewan
Heat exhaustion	Any process where there is exposure to excessive heat	British Columbia
Infected blisters	Any process involving continuous friction	British Columbia, Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan
Infection from handling sugar	Any process involving the refining of sugar	New Brunswick
Infection by staphylococcus aureus (see Staphylococcus)		
Infection, beta haemolytic streptococcal (see Beta)		
Infectious hepatitis	Care of infected patients	Saskatchewan
Inflammation of the synovial lining of the wrist joint and tendon sheaths (see also Tenosynovitis)	Mining or any other process involving continuous pressure or vibration of the parts affected	Newfoundland
Injury to the lungs ⁴	Fire-fighting	British Columbia
Injury to the heart ⁴	Fire-fighting	British Columbia
Lead poisoning	Any process involving the use of lead or its preparations or compounds	All provinces

³See page

⁴See page

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Magnesium and its compounds, dermatitis caused by	Any process involving the use or handling of magnesium or its compounds	British Columbia
Mercury poisoning	Any process involving the use of mercury or its preparations or compounds	All provinces
Metal-fume fever	Any process involving welding on galvanized material or exposure to the oxides of zinc, manganese, cadmium, chromium or copper	British Columbia
Methyl alcohol (see Wood alcohol)		
Methyl chloride poisoning	Any process involving the use of or exposure to methyl chloride	British Columbia
Miners', stone workers' or grinders' phthisis (see also Pneumoconiosis)	Mining; quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	Saskatchewan
Newcastle Disease	Care or handling of poultry or handling carcasses of poultry; laboratory work in connection with the disease	Saskatchewan
Nickel and its compounds, dermatitis caused by	Any process involving the use of nickel and its compounds	British Columbia
Nitrous fumes poisoning	Any process in which nitrous fumes evolve	British Columbia, Newfoundland, Ontario, Quebec, Saskatchewan
Occupational deafness	Any industry involving prolonged and continued exposure to excessive noise	British Columbia
Petroleum products, respiratory, gastro-intestinal or nerve and eye disorders due to contact with	Any process involving the use or handling of petroleum or petroleum products	Saskatchewan
Phosphorus poisoning	Any process involving the use of phosphorus or its preparations or compounds	All provinces
Pneumoconioses other than silicosis	No process listed	Ontario
Pneumoconiosis	No process listed Quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal (see also stone workers' or grinders' phthisis)	New Brunswick

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Pneumoconiosis (Continued)	Monument lettering and setting, stone dressing and cutting, sand blasting, reduction and smelting of ores, manufacture of alabastine, lime and gypsum products, sewer construction, road construction, quarrying or tunnelling, grinding or polishing of stone or metal castings, or any process in any foundry or other manufacturing operation where there is exposure to pneumoconiosis-producing dust	British Columbia Newfoundland
Pneumoconiosis (including, <i>inter alia</i> , silicosis, silico-tuberculosis, anthracosis, asbestosis, and all chronic changes in the lung induced by the prolonged inhalation of dust of a non-living character)	Mining; tunnelling; quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal	Alberta
Pneumoconiosis (including silicosis and asbestosis)	Mining; quarrying, cutting, crushing, grinding or polishing of stone; smelting, grinding or polishing of metal; pottery making	Quebec
Pneumoconiosis (including silicosis) (see also Miners', stone workers' or grinders' phthisis)	Mining; quarrying, cutting, crushing, grinding or polishing of stone or grinding or polishing of metal	Saskatchewan
Pneumoconiosis, coal miners'	Coal mining	Nova Scotia
Poisoning caused by chemicals used in the painting industry	Any work in the painting industry	New Brunswick
Psittacosis, ornithosis (parrot fever)	Any industry under Part I of the Act where there is established contact with infected avian species or material	British Columbia
Pulmonary and respiratory irritation	Any process where there is exposure to vapours, mists or dusts	British Columbia
Radiation diseases (see also Carcinoma)	Any process or industry involving exposure to X-rays, radium or other radioactive substances	British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Respiratory disease due to the inhalation of materials used in non-offset sprays Retinitis (see Conjunctivitis)	Any process or occupation involving the use of non-offset sprays in the printing industry	Ontario
Rhinitis	Any process where there is contact with allergens or chemical vapours or dust	British Columbia
Salmonellosis	Any employment under Part I of the Act in hospital, sanatorium or clinic, or branch of the Victorian Order of Nurses, or in an office or establishment for the practice of any of the healing arts or sciences; in any prison hospital unit of Province; in a public health unit of Province, University of British Columbia, a municipality or school board, or in similar work performed by social welfare workers employed by Province or a municipality; in British Columbia Medical Research Institute; in the Department of Bacteriology of the University of British Columbia; in employment for the Canadian Arthritis and Rheumatism Society (British Columbia Division); and in employment by a member of the Registered Nurses' Association of British Columbia for whom optional protection or independent operator protection has been purchased under the Act	British Columbia
Seal finger	Handling of seals or seal products	Newfoundland
Silicosis ⁵	No process listed	New Brunswick
	Any process involving the inhalation of silica dust	Prince Edward Island
	Mining	Newfoundland
	Mining; quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal	Ontario
	Metalliferous mining industry; coal mining industry; steel-sharpening in metalliferous mining industry, grinding, repairing or handling tools, equipment, or machinery in any mine operation or ore-crushing operation of any mine, or any other work for an employer in the mining industry in which work there is exposure to dust containing silica	British Columbia

⁵For discussion of silicosis, including provisions in Manitoba and Nova Scotia, see page 36.

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Silicosis (included under Pneumoconiosis)		Alberta, Quebec, Saskatchewan
Solvents, poisoning by	Any process involving the use or handling of a volatile solvent (in Saskatchewan, assembling or repairing of motor vehicles, making of paints, paint removers or water-proof fabrics, printing, dry cleaning, welding or gasoline blending)	British Columbia, Saskatchewan
Staphylococcus aureus, infection by (throat or skin infections)	Work involving care of infected patients or the preparation and study of cultures — Saskatchewan (in British Columbia, as for Salmonellosis)	British Columbia, Saskatchewan
Stone workers' or grinders' phthisis (see also Pneumoco- niosis and Silicosis)	Quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal	Newfoundland
Sulphur poisoning	Any process involving the use of sulphur or its preparations or compounds (in British Columbia, in coal mining)	British Columbia, New Brunswick, Prince Edward Island
Sulphur poisoning	Any process involving the use of sulphur or its preparations or compounds (in British Columbia, in coal mining)	British Columbia, New Brunswick, Prince Edward Island
Sulphuric, hydrochloric or hydrofluoric acid poisoning	Any process involving the use or handling of any of these acids or their fumes	Saskatchewan
Tenosynovitis, tendonitis (wrist only — Saskat- chewan) (see also Inflamma- tion of the synovial lining of the wrist joint and tendon sheaths)	Any process involving constant vibration or excessive use of muscles of arm, hand, leg or foot	British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan
Tooth erosion	Any industry where there is exposure to acid fumes or mist	British Columbia
Traumatic deafness	Any industry or process where there is exposure to blasting or other noise capable of producing injury to the auditory nerve or middle ear	British Columbia
Tuberculosis	As for Salmonellosis A hospital, jail, sanatorium, con- valescent home, nursing home,	British Columbia Ontario

DISEASE	PROCESS or INDUSTRY ¹	PROVINCE
Tuberculosis (Continued)	home for the aged, health unit or visiting nursing association to which Part I of the Act applies, or in a laboratory, reform institution, health unit or treatment centre operated by the Province	
Ulceration of mucous membrane of the throat and nose	Any industry where there is exposure to acid fumes or mist	British Columbia
Undulant fever (brucellosis)	Any process in which there is contact with animals or animal carcasses; laboratory work in connection with the disease	British Columbia, New Brunswick, Prince Edward Island, Quebec, Saskatchewan
Vascular disturbances in the extremities (in Saskatchewan, upper extremities)	Any process where there is continuous vibration of machines or power tools (pneumatic or power drills, riveting machines or hammers)	British Columbia, Saskatchewan
Wood alcohol poisoning	Any process involving the use of wood alcohol or any preparation containing it	British Columbia, Saskatchewan
X-rays, radium or other radioactive substances (see Radiation diseases)		

APPENDIX 2

Benefits Payable to Dependents in Case of Death of Workman

(a) Funeral Benefits and Lump Sum to Widow

Province	Maximum Funeral Allowance	Maximum Allowance for Transportation of Body	Lump Sum to Widow ¹
Newfoundland	\$300	\$125	\$200
Prince Edward Island	\$300	\$100	\$200
Nova Scotia	\$300	\$100	\$250
New Brunswick	\$300	\$125	\$200
Quebec	\$600	\$150	\$500
Ontario	\$300	Necessary expenses	\$300
Manitoba	\$300 plus \$50 for burial plot	Necessary expenses; in the Board's discretion, part of necessary expenses where body is moved into or outside the province	\$300
Saskatchewan	\$250 plus \$50 for burial plot	Necessary expenses	\$300
Alberta	\$250 plus \$50 for burial plot	\$100 (only expenses of transporting body within the province allowed)	\$200
British Columbia	\$265 plus \$85 for burial or cremation charges	\$100 (only expenses of transporting body within the province allowed)	\$250

¹ An invalid widower who was dependent on his deceased wife's earnings is eligible for the same benefits as a widow.

(b) Monthly Benefits

Province	Widow's Pension ¹	Allowance to Child with Parent	Allowance to Orphan Child	Where Only Dependants Are Other than Widow and Child	Maximum Compensation Payable
Newfoundland	\$100	Under 16, \$35 ²	Under 16, \$45 ²	Sum to be determined by Board, reasonable and proportionate to pecuniary loss ³	75 per cent of workman's average earnings ⁴ Minimum to widow and children \$150 or total monthly benefits, if less
Prince Edward Island	\$75	Under 16, \$25 ²	Under 16, \$30 ²	As in Newfoundland. Maximum to parent(s), \$40. Maximum in all, \$60 ³	75 per cent of workman's average earnings, but Board may waive the 75 per cent restriction where circumstances require it and pay \$75 to widow and \$25 for each child under 16 ⁴
Nova Scotia	\$90	Under 18, \$30 ²	Under 18, \$35 ²	As in Newfoundland. Maximum \$60 each. Maximum in all, \$75 ³	
New Brunswick	\$75	Under 21, if attending school, \$25 ²	Under 21, if attending school, \$50 ²	As in Newfoundland. ³	75 per cent of \$5,000 a year ⁴
Quebec	\$100	Without age limit, if attending school, \$35 (18 age limit, if not attending school) ²	Without age limit, if attending school, \$55 (18 age limit, if not attending school) ²	As in Newfoundland ³	75 per cent of workman's average earnings ⁴ . Minimum \$135 to widow and one child; \$170 to widow and two children; \$205 to widow and more than two children
Ontario	\$75	Under 16, \$40 ²	Under 16, \$50 ²	As in Newfoundland. Maximum \$100 ³	Average monthly earnings of the workman ⁴ . Minimum \$75 to widow, widow, \$40 to each child or \$50 to orphan child, not exceeding in the whole \$150
Manitoba	\$100	Under 16, \$35 ²	Under 16, \$45 ²	Maximum to wholly dependent mother, \$100. Other dependants, as in Newfoundland. Maximum \$30 each. Maximum in all, \$60 ³	75 per cent of workman's average earnings ⁴ . Minimum \$100 to widow; \$135 to widow and one child; \$170 to widow with two or more children

(Continued on P. 107)

¹An invalid widower who was dependent on his deceased wife's earnings is eligible for the same benefits as a widow.

²Payments to children may be made, at the discretion of the Board, if desirable for a child to continue his education, to the age of 19 in Saskatchewan, to the age of 21 in Alberta, Newfoundland and Prince Edward Island, until the child is granted a university degree for the first time or completes a course in technical training in Manitoba, and as long as the child is pursuing his studies in Ontario. In Manitoba, a higher allowance (\$50 a month) is payable after the age of 16, thus taking into account increased costs of maintenance and schooling. In Alberta, Newfoundland, and Prince Edward Island, payments to invalid children are continued so long as Board considers the workman would have contributed to the child's support. In all other provinces payments are continued until recovery.

³Compensation in these cases is continued only so long as the Board considers workman would have contributed to support.

⁴For maximum annual earnings on which compensation may be based, see Table 2, Column 5.

(Continued from P. 106)

Province	Widow's Pension ¹	Allowance to Child with Parent	Allowance to Orphan Child	Where Only Dependants Are Other than Widow and Child	Maximum Compensation Payable
Saskatchewan	\$110 (\$75 after the age of 70)	Under 16, \$45 ²	Under 16, \$60 plus lump sum not exceeding \$50 at the discretion of the Board ²	As in Newfoundland ³	Average monthly earnings of the workman ⁴ . Minimum \$110 to widow; \$155 to widow and one child; \$200 to widow and two children and \$20 for each additional child ⁵
Alberta	\$85	Under 16, \$45 ²	Under 16, \$45 plus an amount not exceeding \$35 to any child under 21 ²	As in Newfoundland. Maximum to parent(s), \$50. Maximum in all, \$85	
British Columbia	\$122.04 ⁶	Under 16, \$42.45; 16-18 years, if attending school \$47.75; 18-21 years, if attending school, \$53.06 ^{2,6}	Under 16, \$47.75; 16-21 years, if attending school, \$58.37 ^{2,6}	(a) As in Newfoundland Maximum \$115 to parent(s). Maximum in all, \$115. (b) If there is widow or orphans, maximum to parent(s), \$115 ³	

¹An invalid widower who was dependent on his deceased wife's earnings is eligible for the same benefits as a widow.

²Payments to children may be made, at the discretion of the Board, if desirable for a child to continue his education, to the age of 19 in Saskatchewan, to the age of 21 in Alberta, Newfoundland and Prince Edward Island, until the child is granted a university degree for the first time or completes a course in technical training in Manitoba, and as long as the child is pursuing his studies in Ontario. In Manitoba, a higher allowance (\$50 a month) is payable after the age of 16, thus taking into account increased costs of maintenance and schooling. In Alberta, Newfoundland, and Prince Edward Island, payments to invalid children are continued so long as Board considers the workman would have contributed to the child's support. In all other provinces payments are continued until recovery.

³Compensation in these cases is continued only so long as the Board considers workman would have contributed to support.

⁴For maximum annual earnings on which compensation may be based, see Table 2, Column 5.

⁵If widow is over 70, amounts are \$75, \$110 and \$145, respectively.

⁶In accordance with a formula introduced in 1965, pensions and allowances for widows and children are increased 2 per cent for each rise of 2 per cent in the consumer price index.

APPENDIX 3

Benefits in Case of Disability

Province	Permanent Total	Permanent Partial	Temporary Total	Temporary Partial	Maximum Earnings Reckoned
Newfoundland	75 per cent of earnings. Minimum \$125 a month or earnings, if less	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and copy out	75 per cent of earnings for duration of dis- ability; minimum \$25 a week or earnings, if less	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury, or, if more equitable, 75 per cent of difference in earning earnings before and after accident, for du- ration of disability ^{2,3}	\$5,000 a year
Prince Edward Island	75 per cent of earnings. Minimum \$20 a week or earnings, if less ⁴	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and , degree of injury ^{1,2,3}	75 per cent of earn- ings for duration of disability; minimum \$20 a week or earn- ings, if less ⁴	75 per cent of differ- ence in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{2,3}	\$5,000 a year
Nova Scotia	75 per cent of earn- ings. Minimum \$125 a month or, if the work- man has more than one child under 16, the amount which a widow with the same number of children would receive.	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury. If disability 15 per cent or more, average earn- ings must be taken as not less than \$160 a month ^{1,2,3}	75 per cent of earn- ings for duration of disability; minimum \$30 a week or earnings, if less	75 per cent of differ- ence in earnings before and after accident for duration of disability ^{2,3}	\$5,000 a year
New Brunswick	Average earnings but not in excess of 75 per cent of \$5,000	Amount determined by Board, proportion- ate to diminution of earning capacity ²	75 per cent of earn- ings for duration of disability; minimum \$25 a week or earn- ings, if less	If earning capacity diminished by more than 10 per cent, 75 per cent of diminution of earning capacity for duration of disability.	\$5,000 a year
Quebec	75 per cent of earn- ings. Minimum \$35 a week or earnings, if less	Proportion of 75 per cent of earnings in accordance with the degree of disability ^{2,3}	75 per cent of earn- ings for duration of disability; minimum \$35 a week or earn- ings, if less	Proportion of 75 per cent of earnings in accordance with the degree of disability for duration of disability.	\$6,000 a year

(Continued on P. 109)

¹The Act also permits the use of the wage-loss method in calculating compensation. Under this method, compensation is 75 per cent of the difference in the average earnings of the workman before and after the accident.

²If earning capacity is diminished 10 per cent or less (5 per cent or less in Alberta), a lump sum may be given.

³The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

⁴Board may fix compensation on basis of \$15 a week, even though earnings are less than that amount.

(Continued from P. 108)

Province	Permanent Total	Permanent Partial	Temporary Total	Temporary Partial	Maximum Earnings Reckoned
Ontario	75 per cent of earnings. Minimum \$150 a month or earnings, if less, but in no case less than \$100 a month	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury ^{1,2,3}	75 per cent of earnings for duration of disability; minimum \$30 a week or earnings, if less	75 per cent of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of the injury for duration of disability ^{2,3}	\$6,000 a year
Manitoba	75 per cent of earnings. Minimum \$150 a month or earnings, if less	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury ^{1,2,3}	75 per cent of earnings for duration of disability; minimum \$25 a week or earnings, if less	75 per cent of difference in earnings before and after accident or compensation based on impaired earning capacity estimated from the nature of injury for duration of disability ²	\$6,600 a year
Saskatchewan	75 per cent of earnings. Minimum \$32.50 a week	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury ^{1,2,3}	75 per cent of earnings for duration of disability; minimum \$32.50 a week or earnings, if less	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree for duration of disability ³	\$115.386/13 (\$6,000 a year)
Alberta	75 per cent of earnings. Minimum \$35 a week or earnings, if less	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury ²	75 per cent of earnings for duration of disability; minimum \$35 a week or earnings, if less	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury for duration of disability.	\$5,600 a year
British Columbia	75 per cent of earnings. Minimum \$31.84 a week or earnings, if less ⁵	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury ^{1,2,3}	75 per cent of earnings for duration of disability; minimum \$31.84 a week or earnings, if less ⁵	Proportion of 75 per cent of earnings based on impaired earning capacity estimated from nature and degree of injury, or, if more equitable, 75 per cent of difference in earnings before and after accident for duration of disability ²	\$6,600 a year ⁶

¹The Act also permits the use of the wage-loss method in calculating compensation. Under this method, compensation is 75 per cent of the difference in the average earnings of the workman before and after the accident.

²If earning capacity is diminished 10 per cent or less (5 per cent or less in Alberta), a lump sum may be given.

³The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see preceding column) as impairment is of full earning capacity.

⁴Board may fix compensation on basis of \$15 a week, even though earnings are less than that amount.

⁵As increased by 4.04 per cent from January 1, 1967, in accordance with a formula introduced in 1965, under which pensions and minimum compensation are increased 2 per cent for each rise of 2 per cent in the consumer price index.

⁶Provision was made for periodical increases of \$1,000 in the ceiling, if earnings increase in line with a formula contained in the Act.

APPENDIX 4

Titles and Citations of Acts and Ordinances

FEDERAL

Government Employees Compensation Act, R.S.C. 1952, c. 134

Amended by

R.S.C. 1952, c. 323
1955, c. 33
1966-67, c. 96
1967-68, c. 16

Merchant Seamen Compensation Act, R.S.C. 1952, c. 178

Amended by

1952-53, c. 16
1957, c. 9
1965, c. 45

PROVINCIAL

Alberta — *The Workmen's Compensation Act*, R.S.A. 1955, c. 370

Amended by

1956, c. 62
1961, c. 89
1965, c. 102

British Columbia — *The Workmen's Compensation Act*, R.S.B.C. 1960, c. 413

Amended by

Statute Law Amendment Act, 1963, c. 42, s. 24
Statute Law Amendment Act, 1965, c. 50, s. 18
Order in Council No. 3031, November 2, 1965 (B.C. Reg. 198/65)
1967, c. 56

Manitoba — *The Workmen's Compensation Act*, R.S.M. 1954, c. 297

Amended by

1955, c. 84
1956, c. 74
1958 (1st session), c. 75
1959 (2nd session), cc. 73 and 74
1960, c. 85
1961, cc. 70 and 71

1963, c. 98

1964, c. 60

1965, c. 91

1966, c. 74

1967, c. 73

Newfoundland — *The Workmen's Compensation Act*, 1962, No. 32

Amended by

1964, No. 57
1966, No. 19
1966-67, No. 58

New Brunswick — *The Workmen's Compensation Act*, R.S.N.B. 1952, c. 255

Amended by

1953, c. 25
1955, c. 81
1957, c. 68
1958, c. 59
1959, c. 79
1960, c. 79
1961-62, c. 72
1963 (2nd session), c. 44
1965, c. 48

Nova Scotia — *The Workmen's Compensation Act*, R.S.N.S. 1954, c. 319

Amended by

1956, c. 49
1957, c. 57
1958, c. 71
1959, c. 46
1960, c. 50
1961, c. 51
1962, c. 56
1964, c. 52
1965, c. 58
1966, c. 62

Ontario — *The Workmen's Compensation Act*, R.S.O. 1960, c. 437

Amended by

1962-1963, c. 145
1964, c. 124
1965, c. 142

(Acts and Ordinances Continued)

Prince Edward Island — *The Workmen's Compensation Act*, R.S.P.E.I. 1951, c. 178

Amended by

- 1952, c. 48
- 1953, c. 50
- 1955, c. 35
- 1956, c. 46
- 1957, c. 38
- 1958, c. 33
- 1959, c. 34
- 1960, c. 48
- 1961 (2nd session), cc. 44 and 45
- 1962, c. 41
- 1963, c. 38
- 1964, c. 37
- 1966, c. 46
- 1967, cc. 60 and 61

Quebec — *The Workmen's Compensation Act*, R.S.Q. 1964, c. 159

Amended by
1967, c. 52

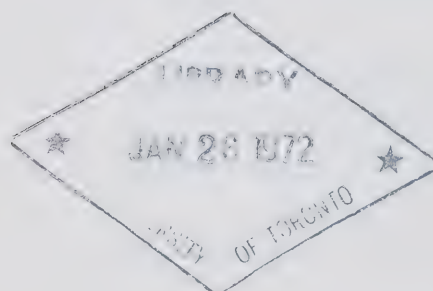
Saskatchewan — *The Workmen's Compensation (Accident Fund) Act*, R.S.S. 1965, c. 284

ORDINANCES

The Workmen's Compensation Ordinance, O.N.W.T. 1967, c. 22
The Workmen's Compensation Ordinance, O.Y.T. 1966 (2nd session), c. 1

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Changes in Workmen's Compensation in Canada, 1968



LEGISLATION BRANCH
CANADA DEPARTMENT OF LABOUR

Changes in Workmen's Compensation Legislation and Administration in 1968

In 1968 the British Columbia Workmen's Compensation Act was replaced by a new statute. The revised Act put into effect changes recommended by the Tysoe Royal Commission of Inquiry and by a special legislative committee which examined the Bill during passage. The Ontario Act was amended, implementing recommendations of the 1967 McGillivray Royal Commission Report. The Nova Scotia Act was consolidated and revised, introducing a number of significant amendments. Less extensive amendments were made to the Newfoundland, Saskatchewan and Prince Edward Island Acts. Two minor changes were made in the federal Government Employees Compensation Act. At the fall session of the New Brunswick Legislature the Workmen's Compensation Act was amended, increasing certain benefits as of January 1, 1969.

The principal changes are described under various subject headings below. In specific instances, page numbers are inserted referring to the section of the study "Workmen's Compensation in Canada" to which the amendment relates.

Additional copies of this publication are available on request to the Canada Department of Labour, Sir Wilfred Laurier Building, Ottawa.

Coverage

In Nova Scotia, the fishing, dredging and sealing industries, presently subject to a system of individual liability and compulsory insurance on the part of the employer, were brought within the collective liability provisions of the Act.

These amendments, made in accordance with the recommendations of a commission of inquiry, are to go into force on January 1, 1970.

In relation to the fishing industry, both persons employed on a boat or vessel and paid wages by the employer and persons remunerated by a share in the proceeds of a voyage are to be considered "workmen" for the purposes of the Act.

An independent commercial fishing operator, who is neither an employer nor a workman, may be granted coverage on application. (See page 63)

New regulations under the Nova Scotia Act made provision for coverage of many more small undertakings. As of January 1, 1970, only those workplaces which employ fewer than 3 workmen will be excluded. At present all undertakings with fewer than 5 workmen are exempted.

In Ontario, coverage was extended to persons called out to assist in fighting fires under the Fires Extinguishment Act or the Forest Fires Prevention Act. These persons, while so engaged, are to be considered employees of the township and of the province, respectively, and their earnings for compensation purposes are to be the rate of earnings established at their regular employment, subject to the maximum set by the Act.

Ambulance drivers and attendants serving a municipality and working with or without remuneration were brought within the scope of the British Columbia Act. Compensation for such persons working without remuneration will be based on their average earnings in their regular employment, subject to the earnings ceiling in the Act. The amount of their average earnings may not be less than the amount on which the employer has been assessed.

The Workmen's Compensation Board was authorized to cover volunteer employments ("employments without remuneration undertaken in the public interest").

On application by the province, persons undergoing training in a provincial vocational school under a federal-provincial agreement may also be covered, and their average earnings may be fixed by agreement between the province and the Board.

The Act, as now amended, excludes from coverage all members of the family of the employer under the age of 21, whether or not they reside with him. The previous wording was "members of the family of the employer residing with the employer and being under the age of twenty-one years". Such family members may be covered on application. (See page 55)

As of October 1, 1968, a new group of industries was added to the schedule under the Quebec Act, in accordance with the plan announced in 1967 for the inclusion of six lists of undertakings on October 1 of each year from 1967 — 1972, inclusive. (See page 44)

Among the newly-covered industries are the transport of passengers by bus, taxi, ambulance or other vehicle; the operation of public elevator, express, shipping, weighing and inspection services (not included in Schedule 2); vehicle wrecking; scrap businesses; the sale and rental of machinery; vehicle rental; the operation of parking lots; detective and security agencies; employment agencies; labour unions or federations; professional, forestry, prevention, community and businessmen's associations; social clubs, and other similar types of associations.

The federal Government Employees Compensation Act was declared to apply to persons required to take an approved training course before entering government employment and to government employees who are on leave without pay for the purpose of taking a training course approved by the Minister of Labour.

Basis of Entitlement to Compensation

An important change made in the British Columbia Act was that the words "by accident" were struck out from the basic formula for determining entitlement to compensation — "personal injury by accident arising out of and in the course of the employment". (See page 5)

The purpose of the amendment, made on the recommendation of the Tysoe Commission, was to make it clear that compensation is payable for any personal injury to a workman that is shown to be work-caused.

Under the present formula, "personal injury arising out of and in the course of the employment", compensation is payable both for a disability resulting from an "accident" in the sense of a single sudden and fortuitous event and for cumulative injury occurring over a period of time.

A change was made in the definition of "accident" in the Nova Scotia Act for the same purpose. "Accident" is now defined, as in a number of other provincial Workmen's Compensation Acts, to include "disablement arising out of and in the course of employment." The intent of the amendment is to enable the Board to grant compensation for any work-caused disablement, regardless of whether or not there has been an accident, in the sense of a particular incident at a particular time. (See page 5)

Benefit of Doubt

A further provision was added to the section of the British Columbia Act stating that the Board is not bound to follow legal precedent and its decision must be given according to the merits and justice of the case. The new clause provides that, where there is doubt of any issue and the disputed possibilities are evenly balanced, the issue must be resolved in accordance with that possibility which is favourable to the workman. (See page 61)

Waiting Period

In Nova Scotia, the waiting period was reduced from four days to three days. In Ontario, it was reduced from three days to one day, the day upon which the accident occurs.

Ceiling on Annual Earnings

The ceiling on the annual earnings of the workman as a basis for compensation and for the purpose of the employer's assessment was increased in four provinces. The increases were from \$5,000 to \$6,000 in Nova Scotia, from \$6,000 to \$7,000 in Ontario and from \$6,000 to \$6,600 in Saskatchewan. (In Saskatchewan, the earnings ceiling is expressed in terms of average weekly earnings of \$126.92 $\frac{4}{13}$ instead of \$6,600 a year). In New Brunswick, the ceiling was raised from \$5,000 to \$5,500 for 1969 and to \$6,000 thereafter.

In British Columbia, the maximum earnings on which compensation may be based may be periodically increased by \$1,000 under a formula laid down in the Act. The Industrial Composite of Average Weekly Wages and Salaries in British Columbia for the month of January in a calendar year, as published by the Dominion Bureau of Statistics, is now to be used as the basis for determining the percentage of workmen earning more than the existing maximum and the percentage earning more than \$1,000 in excess of the existing maximum, rather than the year-end records of the Board. Where the Board finds that not less than 20 per cent of the workmen employed in industries under Part I are earning more than \$1,000 in excess of the maximum, and not less than 45 per cent are earning more than the maximum, it must increase the ceiling for the succeeding calendar year by \$1,000. (See page 11)

Minimum Payment for Total Disability

In British Columbia, a minimum payment of \$150 a month, regardless of lower average earnings, was established for all permanent total disability pensions. The same minimum was set in 1967 but only with regard to persons in receipt of permanent total disability pensions as of April 1, 1967.

As a result of a 2 per cent increase in the Consumer Price Index in 1967, the minimum compensation payable to workmen for temporary total disability was increased from January 1, 1968, by 2 per cent to \$32.47 a week or average earnings, if less. (See page 8)

Higher minimum payments for total disability were also put into effect in Saskatchewan, Prince Edward Island, New Brunswick and Nova Scotia. The minimum payment in Saskatchewan is now \$36 a week in place of \$32.50 (for temporary total disability, \$36 a week or average earnings, if less); and in Prince Edward Island it is \$25 a week instead of \$20 (or average earnings, if less). In New Brunswick and Nova Scotia, the minimum payment for temporary total disability was raised: from \$25 to \$30 a week or average earnings, if less, in New Brunswick, and from \$30 to \$35 a week or average earnings, if less, in Nova Scotia.

Disability Benefits

The Ontario Board was authorized to make a lump sum payment in compensation for a serious facial disfigurement, notwithstanding the fact that the workman's earning capacity has not been impaired.

A section of the British Columbia Act was rewritten to state in more specific terms that, where a personal injury or disease is superimposed on an already existing disability, compensation is to be awarded for only that portion of the resulting disability that is attributable to the injury or disease. The Act states further that the measure of the disability attributable to the personal injury or disease shall, *prima facie*, be the amount of the difference between the workman's disability before and disability after the occurrence of the personal injury or disease.

The Board was empowered to set up a Second Injury Fund (see page 86) for the purpose of paying part of the cost of the claims of workmen suffering enhanced disability by reason of a pre-existing disease, condition or disability.

A provision formerly applicable to workmen under 21 was rewritten to cover both minors and apprentices. The Board may adjust from time to time payments of time-loss compensation to take into account a probable increase in average earnings of workmen who at the time of injury by reason of age or being in the course of learning a trade or calling were receiving earnings which did not truly represent their average annual earnings or earning capacity. In calculating a permanent disability award, the Board may take the same factor into account.

A new section was added to the Act authorizing the Board to pay time-loss compensation based on current earnings and at current rates of benefit for a recurrence of a disability after the lapse of five years from the occurrence of the original injury. (See page 22)

A comparable provision in the Ontario Act, enacted in 1964, was declared to apply whether the original disability was temporary or permanent. Previously, it was applicable only if the original disability was permanent. It states that, if a workman suffers a recurrence of a disability due to an earlier compensable accident, compensation is to be paid on his current average earnings or on his average earnings at the date of the accident, whichever are greater. This provision is applicable, regardless of when the original injury occurred.

Suspension of Compensation

Authority was granted to the British Columbia Board to divert compensation payments from a workman to his wife or children where the workman is not supporting his family and they are likely to be a charge upon the municipality in which they reside.

A new provision in the Nova Scotia Act permits the Board to reduce or suspend compensation where a workman refuses to submit to medical or surgical treatment deemed by the Board to be reasonably essential to his recovery or where a workman persists in unsanitary or injurious practices tending to imperil or retard his recovery. (See page 16)

Dependants' Pensions and Allowances

Benefits for dependants were increased substantially in Ontario. The maximum allowance to cover the necessary expenses of the burial or cremation of the workman was raised from \$300 to \$400, and the lump sum payment to a widow or foster mother was increased from \$300 to \$500.

A widow's pension was increased from \$75 to \$125 a month, the allowance to a child under 16 from \$40 to \$50 a month, and the allowance to an orphan child under 16 from \$50 to \$60.

The amendments also provided for a minimum pension to a widow and children of \$275 a month, instead of \$150. For dependants other than widow and children a maximum of \$150 a month, instead of \$100, may now be paid.

The increases were made applicable to all pensions payable on August 1, 1968, irrespective of the date of the accident.

As a result of a further amendment, dependants who do not reside in Canada are now eligible to receive the same statutory benefits as Canadian residents.

In Saskatchewan, increases of \$5 a month were granted in widows' and children's benefits, bringing a widow's monthly pension to \$115, the allowance to a child under 16 to \$50 and the payment to an orphan to \$65. These increases were made applicable to existing as well as future pensions.

A provision was deleted under which a widow's pension reverted to \$75 a month after the age of 70.

The Act was also amended to provide for payment of compensation for educational purposes, at the discretion of the Board, to the age of 21, instead of 19, as previously.

In Nova Scotia, the maximum allowance for funeral expenses was increased to \$400 from \$300. Payment of compensation was authorized to the end of the school year in which a child reaches the age of 18, rather than to the child's eighteenth birthday, as formerly.

In Prince Edward Island, the monthly payment to an orphan under 16 was raised from \$30 to \$35.

In New Brunswick, the maximum funeral allowance was raised from \$300 to \$500 and the Board was empowered to pay necessary expenses for transporting a workman's body for burial. Formerly such expenses were subject to a limit of \$125.

In British Columbia, a further 2 per cent increase in widows' and children's benefits went into effect on January 1, 1968, in line with the provisions in the Act introduced in 1965

tying these payments to increases in the Consumer Price Index. These benefits are incorporated in the new Act.

A widow's pension is now \$124.48 a month. Monthly allowances for dependent children are \$43.30 for those under 16; \$48.71 for those between 16 and 18, if attending school; and \$54.12 for those between 18 and 21, if at school. Orphans' allowances are \$48.71 for those under 16 and \$59.54 for those between 16 and 21, if at school. (See page 107)

The Newfoundland Act was amended to place a limit of \$312.50 a month (i.e., 75 per cent of the \$5,000 ceiling on earnings) on the amount of compensation payable to dependants in death cases. The amendment was made applicable to all payments accruing from July 1, 1967, regardless of the date of the accident.

Medical Aid

Amendments in several provinces extended or clarified a workman's entitlement to free medical services under the Act.

In Ontario, the aid of optometrists was expressly included in the term "medical aid". The right of the workman to choose initially his attending doctor was written into the Act, giving statutory effect to a practice followed by the Board.

The Board was permitted to pay an allowance for the replacement or repair of clothing worn or damaged by reason of wearing an artificial member. The allowance may not exceed \$104 a year in the case of a lower limb prosthesis and \$52 a year in the case of an upper limb prosthesis.

The Act was also amended to state that an employer, in carrying out his obligation to furnish transportation for an injured workman from the scene of the accident to a doctor or hospital or to his home, is required to convey the workman only to a hospital or doctor within the area or within a reasonable distance of the place of injury.

In Nova Scotia, an employer who fails to obtain necessary medical aid for an injured workman or to provide him with transportation to a doctor or hospital is now liable to repay the Board the amount paid by it for obtaining such transportation. The employer was previously required to repay the Board double the amount paid.

The British Columbia Board was formerly permitted to replace and repair eyeglasses, dentures and hearing aids broken in an employment accident only if the breakage was accompanied by objective signs of personal injury. It is now permitted to do so where there is no personal injury, if the accident is otherwise corroborated and the Board is satisfied that the workman was not at fault.

In Nova Scotia, the helplessness allowance payable at the discretion of the Board if a workman requires attendance because of permanent total disability was increased from a maximum of \$40 to a maximum of \$60 a month.

A section of the former British Columbia Act excluding from medical aid coverage seamen who were entitled to medical aid from the Sick Mariners' Fund (see page 28) was repealed. Seamen protected by the Sick Mariners' Fund may now choose between the medical aid provided by the Fund and the medical aid benefits of the Workmen's Compensation Act.

Medical Reviews

In British Columbia, important changes were made with respect to the procedure and powers of a Medical Review Panel, composed of three specialists, which may be set up to review a disputed medical decision of the Board. Workmen or employers have a time limit of 90 days within which to apply for a review of a decision.

No specialist may be a member of a Medical Review Panel who (1) examines workmen on behalf of the employer, (2) has treated the workman, (3) has acted as a consultant in the treatment of the workman, (4) is a partner of, or practises medicine together with, such specialist. There may not be on the same Panel specialists who are partners or who practise medicine together.

The certificate of a Medical Review Panel is conclusive as to the matters certified and is binding on the Board.

The Panel may now make a separate report and recommendations on any matter arising out of a claim it has reviewed, and the Board is required to forward this report to the doctor who stated that there was a *bona fide* medical dispute to be resolved.

Dependants of a deceased workman who are aggrieved by the decision of the Board concerning the cause of death of the workman may apply to the Board to have a Medical Review Panel inquire into and ascertain the cause of death.

The Nova Scotia Act was amended to provide that a workman may select an advocate or

representative to assist him in presenting his claim to a medical review board appointed to review his case.

Rehabilitation

The limit on the amount of money that the Ontario Board may spend annually on its rehabilitation program was removed. Previously, it was limited to an expenditure of \$200,000 or such greater amount as might be authorized by the Lieutenant-Governor in Council.

Industrial Diseases

A special provision in the British Columbia Act allows the Board to accept a claim for compensation arising from exposure to ionizing radiation in employment in the province (see page 35), notwithstanding that disablement or death did not occur within 12 months from the last employment of the workman involving such exposure (the normal requirement for entitlement to compensation for an industrial disease).

A revised schedule of 22 industrial diseases now appears in the British Columbia Act. The Board may add industrial diseases to the schedule, without the approval of the Lieutenant-Governor in Council. Formerly, Cabinet approval was required.

"Silicosis" was defined in less restrictive terms in the British Columbia Act as "a fibrotic condition of the lungs caused by the inhalation of silica dust". A requirement that the condition had to be "accompanied by a lessened capacity for work" was removed.

Regulations of the Board requiring medical examination of workmen employed in the construction of underground rock tunnels were revised to change the interval at which a workman must be re-examined. The regulations no longer list specific occupational categories of workmen for which examinations and certificates of fitness are mandatory. The employer is now required to cause "each workman employed underground" to be examined within one month of entering employment, at the end of one year after the date of his first examination, and at two-year intervals thereafter. Formerly, annual re-examinations were required. The regulations do not now stipulate that the examining physician must be selected by the employer.

The Ontario Board was authorized to make agreements with the Boards of other provinces to provide for the sharing of the costs of silicosis claims in proportion to the extent of exposure in each province.

A three-member Silicosis Referee Board was appointed under the authority of the Newfoundland Act.

Under new regulations issued by the Newfoundland Board, persons employed in a "dust exposure occupation", as defined, are required to hold a medical certificate in good standing and to have it renewed annually. Medical certificates are to be issued after examination and X-ray conducted by a medical examiner appointed by the Minister of Health. The Board is to designate the employers who will come within the scope of the regulations. The regulations are similar to those issued under the Regulations of Mines Act in 1959.

The Government Employees Compensation Act was amended to provide for payment of compensation to an employee who is disabled by reason of a disease that results from the environmental conditions of a place outside Canada to which he was assigned in the course of duty, and to the dependants of the employee in case of his death. Persons engaged locally outside Canada are excluded. Regulations under the Act stipulate that compensation is payable on the certification of a medical doctor employed by the Department of National Health and Welfare that the disease is clearly attributable to environmental conditions of the place outside Canada to which the employee was assigned and is of a type that would not normally be contracted in Canada.

Reporting of Accidents

In Ontario, a larger maximum fine, \$200 instead of \$50, may now be imposed for failure to submit accident reports. An employer is required to notify the Board within three days after he learns of the happening of an accident. The words "he learns of" were inserted.

Safety and First Aid

As a means of bringing about improvement in the safety record of an employer whose work injury frequency and accident cost are higher than the average for the industry, the Ontario Board was authorized to require the employer to establish a safety committee at the plant level. (See page 74)

Comprehensive Industrial Safety Regulations were issued by the Prince Edward Island Board. These regulations are applicable to all industries within the scope of the Workmen's Compensation Act.

The British Columbia Board was authorized to impose a special rate of assessment on an employer for failure to comply with first aid service requirements, and, in cases of flagrant violation, may order the closing down of the operations of an employer.

The Board was also empowered to supervise the training of and train industrial first aid attendants and instructors.

In a new regulation (No. 33), the Quebec Workmen's Compensation Commission laid down revised requirements for first aid services in industries. The regulation is more specific than the former regulation about the qualifications required for first aid attendants. It states that, when an industry has no doctor or male or female nurse in full-time attendance during working hours, the employer, according to the type of establishment, must have one or more persons qualified in first aid by a recognized body, such as the St. John Ambulance Association.

First aid regulations in Nova Scotia were also revised. The new requirements are similar to those in effect in Alberta, Manitoba and Saskatchewan.

In Prince Edward Island, detailed first aid requirements were included in the new Industrial Safety Regulations recently adopted by the Board. These requirements are similar to those set out in the New Brunswick Industrial Safety Code. As in other provinces, these regulations require an employer to ensure that a registered nurse or an employee who is the holder of a Standard First Aid Certificate, or higher award, is in charge of a first aid room.

A new regulation made under the New Brunswick Industrial Safety Act reconstituted the Industrial Safety Council (see page 73) and provided for the appointment of an advisory committee.

The reconstituted Council consists of five members, to be appointed for one year, subject to reappointment: the Chairman of the Workmen's Compensation Board; the Director of Technical Services of the Department of Labour; one labour representative; one employer representative and a chairman.

The advisory committee, to be appointed by the Minister of Labour, is to be composed of not less than four and not more than 12 members representative (not necessarily equally) of labour, management and government from industries subject to the Workmen's Compensation Act. The Lieutenant-Governor in Council is to designate one member as chairman. The Executive Director of the Industrial Safety Council, the Director of the Technical Services Branch of the Department of Labour and a representative of the Workmen's Compensation Board are *ex officio* members. The committee is required to meet at least four times a year.

The authority of the British Columbia Board to carry on a general educational program for employers, employees and the general public was restated. The Board is permitted for this purpose to advertise, sponsor contests, and give prizes, scholarships and other monetary awards, including rewards for bravery in rescue work.

Compensation Consultant

In British Columbia, provision was made for the appointment of a Compensation Consultant, in addition to the Compensation Counsellor (see page 62) already provided for in the Act, for the purpose of assisting workmen and dependants with their claims and appearing before the Board or other tribunal on their behalf.

The Compensation Consultant is to be independent of the Board and a qualified lawyer. The Act provides that he is to be appointed by the Lieutenant-Governor in Council on the recommendation of the Attorney-General and that his salary is to be paid from the Consolidated Revenue Fund. The Compensation Counsellor acts under his direction. Both have access to the complete files and records of the Board relating to an injured workman. A Compensation Consultant has been appointed to the newly-created post.

Boards of Review

Provision was also made in British Columbia for the creation of Boards of Review. (See page 61)

The Board is required to constitute one or more Boards of Review, each of which is to consist of senior officers named by the Workmen's Compensation Board and a chairman appointed for a fixed term of office by the Lieutenant-Governor in Council. The salary of the chairman, as fixed by the Lieutenant-Governor in Council, is to be paid from the Accident Fund.

A Board of Review will review decisions of Board officers at the request of the workman, the employer or the Chief Claims Officer. The Board may act upon the findings and report of a Board of Review.

Administrative Changes

Provision was made for the appointment of a Vice-Chairman of the British Columbia Board. A Vice-Chairman is *ex officio* a Commissioner.

In Nova Scotia, Board members must retire at the age of 70 (rather than 75), unless otherwise directed by the Lieutenant-Governor in Council.

In Alberta, appeals of a non-medical nature are referred to the Claims Review Committee or to the Board for review and adjudication. In 1967 a full-time chairman was appointed to the Claims Review Committee.

In British Columbia, a Claims Advisory Service Department of the Board was established, effective from January 1, 1968, to provide information and give advice to workmen and employers and to explain the reasons for decisions on claims.

The Ontario Board is required to make its annual report to the Minister of Labour, rather than to the Provincial Secretary.

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